LE PROTECTEUR DU CITOYEN

Québec Ombudsman

Assemblée nationale

Québec

2001-2002 ANNUAL REPORT

JUSTICE RECOURS MINISTÈRES ORGANISMES DIGNITÉ RESPECT ÉQUITÉ

Above and beyond THE LAW

fairness departments

agencies

integrity justice

respect recourse

103-03510/

Québec City, November 2002

Madam Louise Harel
Speaker
Assemblée nationale
Hôtel du Parlement
Québec (Quebec) G1A 1A4

Dear Madam Speaker:

I am honoured to submit to you the 32nd Québec Ombudsman's Annual Report for the period covering April 1, 2001 to March 31, 2002, entitled: *Above and Beyond the Law*.

In my previous report, I reminded the government of the place that citizens must occupy within the public service system. This year, I placed the accent on adapting solutions to personal situations. In reaching for this goal, I recommend flexibility and openness as qualities that, in my experience, must guide the government in its decisions for the well-being of all citizens of Quebec.

Yours truly,

The Québec Ombudsman,

Pauline Champoux-Lesage

dignity
justice
respect
fairness
recourse
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departments
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dignity
justice
respect

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The current logo of the Québec Ombudsman is a variation on the classic scales of justice, which symbolize the search for balance between competing rights. Normally, the scales represent justice as rendered by the courts and administrative tribunals.

The Québec Ombudsman's office is a nonjudicial conflict resolution mechanism that is generally more accessible than the courts. Not only must the Québec Ombudsman's decisions comply with the law, they must also be equitable. Equity is the ultimate level of justice.

On one level, then, the logo symbolizes the desire for justice represented by one of the pans of the scale. At another, the "P" replacing the other pan symbolizes the *Protecteur du citoyen*, the French term for Ombudsman. The "P" also refers to the highest level (*palier*) of justice-equity. Equity means applying the law with a human face.

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1

Québec Ombudsman's Comments and Reflections

Québec Ombudsman's Comments and Reflections

"Above and Beyond the Law" is a topic that may be surprising to some readers. Is the Québec Ombudsman advocating delinquency and arbitrariness? Quite the contrary; I am convinced that the citizen is best served by a constitutional state and that laws and standards aim to ensure justice and guarantee respect for human rights. Legality is the most important value we have and, like the courts and administrative tribunals, the Ombudsman also wishes to ensure that it is respected.

However, as the saying goes, every rule has its exception. The legal profession and the Administration readily admit that laws and standards, as well thought-out as they are, cannot foresee all cases. There will always be exceptions for which justice and fairness require to transcend the Law and to responsibly use our own judgement. This is what I must often remind officials as Ombudsman.

Changing Attitudes and Modifying Practices

The Public Administration is the State personified. At its root are two fundamental principles: the separation of its judicial, legislative and executive powers, and its administrative legitimacy. While parliament votes in laws and judges apply and interpret them, the Administration executes them, and thereby receives its foundation and its powers by virtue of the rule of law.

The Administration in fact has a double role: to establish standards so that the objectives of a particular law are attained and to apply these standards so that public interest is served.

In a constitutional state, both government and citizens are subject to pre-set rules. At the peak of the administrative pyramid, these standards inform and also guide our thoughts. We have developed an attitude whereby stepping out of the norm leaves us lost, with little hope of salvation.

Taken in that light, certain decisions made by civil servants sometimes betray rigidity, first and foremost by turning a blind eye to facts that would justify a departure or merely an adaptation of the rules to suit the circumstances. As often

occurs when a guideline or policy is too strictly applied, leaving no room for nuance, it is the ultimate aim and spirit of the law that is compromised.

With the proliferation of laws and social policies, there are an astounding number of rules and regulations. The complexity and number of the resulting administrative processes make it necessary to adopt an equally large number of policies and guidelines. However, the latter occasionally stray from the social focus of their enabling legislation. Below is an example submitted to me this past year:

At the request of the Société de l'assurance automobile du Québec, an 81-year-old woman had to undergo a medical examination. As she lived in a remote area, this meant that she had to travel close to 500 kilometres (round trip) in one day. She was driven to the appointment and claimed expenses for the need for an accompanying person. These expenses are indeed reimbursed through the Automobile Insurance Act, provided it is "medically necessary" for the person to be accompanied.

The Société refused her claim. It based its decision on a regulation regarding the eligibility criteria for this allowance, which stated that when the claim was based on age, only accident victims under 16 were eligible.

When the Québec Ombudsman intervened, the Société acknowledged that the law could be open to a larger interpretation than the guideline allowed and that senior citizens could justifiably require accompaniment as much as youths.

The guideline was changed. From now on, all criteria are approached from the angle of the spirit of the law.

In this matter, the guideline was too restrictive, and ignored the needs of a large group of citizens.

Thus, it appears that a strict application of the standards does not always result in a fair judgement. For some, equity and fairness appear to contradict the idea of equality of all under the law. How many times have citizens been told, "I understand your situation but, in all fairness to others, I have to apply the same rule, in the same way, to everyone"? Civil servants who speak this way are invoking the notion of equal treatment for all, which is justified in most cases.

However, the notion of fairness takes certain circumstances into consideration, allowing standards and rules to be adapted to individual situations. Based on the spirit and the ultimate goal of the law, fairness governs exceptions.

So, are we to conclude from the above that the Public Administration must both maintain standards so that the public interest is served and at the same time bend them for delicate issues and special circumstances? It appears that this is a challenge for any administration seeking both justice and fairness, where standards and laws reflect and give effect to fundamental values.

Accustomed to fighting arbitrariness, the bureaucrat's first instinct is often to brush away exceptions in the name of equality and uniformity. However, the exception and the rule are two sides of the same coin when seen from the angle of the spirit and the ultimate goal of the law and its values.

In my opinion, the solution lies in a flexible interpretation that implies an openness of mind and an ability to adapt. Said flexibility, of course, must rely upon an overall view and guiding principles. For decision-makers at all levels of government, this requires a certain amount of room to manoeuvre and the corresponding recognition and support.

Far from reintroducing and promoting arbitrary decisions, this way of doing things rather supports decisions that uphold the intent of the author of the standard, thus eliminating the rule/exception dichotomy.

Two Main Points in the Wake of Increasing Complaints

In carrying out my mission of looking over the Administration's shoulders, I intervene in government departments and agencies to correct prejudicial and injurious situations. My mandate is to receive complaints from anyone regarding acts carried out – or not carried out – by the Public Administration.

Between April 1, 2001 and March 31, 2002, the Québec Ombudsman received 25,249 requests for intervention. Of this number 5,978 were investigated, calling into question 61 govern-

ment departments and agencies. There were a total of 1,778 valid complaints, which translated into a breach rate of 29.7%, as opposed to 28.3% for the preceding fiscal period.

In order to assess the potential prejudicial character of a given action or decision taken by the Public Administration, I rely upon recognized democratic values: justice, fairness, respect and transparency.

Integrating these values into the Public Administration's regular activities remains our common challenge. The Social Pact, introduced in 1994 as a guide for government action, sets forth values and suggests certain practices, some of which can now be found in the Act respecting Administrative Justice. I would like to believe that the Administration refers to it in its daily activities.

While the reasons for injurious practices vary from sector to sector, an analysis of the complaints received over the past fiscal year highlights two points deserving of attention.

The first relates to the quality of information transmitted to citizens. With the large number of laws and social programs in existence, it goes without saying that there are many rules with complex applications. However, if the standards are to be maintained and respected, they must first be known and understood.

Whatever means of transmitting information is used (telephone, forms, flyers, guides, statements, notices, etc.), the message is sometimes vague and the information incomplete. In many cases, this results in a loss of rights for citizens, as can be seen in the following example.

A citizen called upon the Québec Ombudsman to see if the Ministère de l'Emploi et de la Solidarité sociale was paying her all the financial assistance she was eligible for. As she had just given birth, she was possibly eligible for maternity benefits. This $360 allowance is given to pregnant women to compensate for the 14-day qualifying period for employment insurance. However, the Ministère informed her that the allowance is considered income and therefore reduced her basic benefit by the same amount.

While the allowance is indeed considered an income, the rules allow for an exemption of $300 for this type of allowance. Without the intervention of the Ombudsman, the woman would have been deprived of $300 in additional income.

In this matter, inaccurate information from the Ministère could have caused the woman to lose what was rightfully due her.

In order to preserve rights lost in that way, it is sometimes necessary to initiate a revision and appeal process that can often be long, oppressive and costly, both for the State and the citizen.

The second point common to many government departments and agencies involves the strict application of laws and standards to specific clienteles.

In that regard, I feel it appropriate to bring up the subject of people with particular psychological profiles.

For some of these people, the obligations involved in exercising their rights very often include insurmountable obstacles. Meeting a deadline, filling out a form and providing a document are some of the steps that can be impossible for them. What can we do in these cases? In order to avoid breaking the rules, must the civil servant withdraw a benefit, refuse compensation or even impose a penalty when circumstances dictate flexibility? Especially when the majority of these laws are supposed to grant a right rather than withdraw one? The following example illustrates the situation very well.

The Ministère de l'Emploi et de la Solidarité sociale cancelled benefits to a 55-year-old citizen since she had refused to provide a piece of identification, in this case her health insurance card. For several months, the Ministère notified the lady that she had to produce this document to prove her identity. However, the citizen did not have a health insurance card because she believed she was being spied on by people who wanted to steal it and that many people were conspiring against her.

The citizen, who had not been in the workforce for many years, declared that she was able to work and believed that an employer would offer her work very soon. She even returned the higher welfare allowance payments that the Ministère had sent her due to age-related employability restraints.

Since the citizen's refusal to co-operate led to the cancellation of her benefits, she became utterly destitute. A community organization (a soup kitchen), where the woman arrived completely confused and dishevelled, appealed to the Ombudsman, who realized only too well that the woman was in a crisis situation; she was too confused to understand the Ministère's rules. Following an investigation, the Ombudsman was able to restore the benefits since, aside from the formalities, the citizen was eligible for last-resort financial assistance.

The question is not an easy one and brings to light the inherent difficulties in striking a balance between the regular application of the law and the individual approach required in certain situations. In my opinion, the spirit and ultimate goal of the law must always take precedence over blindly following set standards. Thus, in the above case, the citizen could not provide the required documents but her file, taken as a whole, proved her eligibility. If we are not careful, programs aimed at combating exclusion are at risk of not meeting their goals.

The Preventive Approach and What it has Accomplished

The Québec Ombudsman does not limit its activities to correcting injuries. In my 2001-2004 Strategic Plan, I place tremendous importance on a preventive approach, whether it takes the form of reflection on a current issue, a commentary on parliamentary activities or exchanges with government departments and agencies.

Thus, following the November 2001 Forum on Compulsive Gambling organized by the Minister of Health and Social Services, I commented on the issue in a document entitled "*Réflexion du Protecteur du citoyen sur les jeux de hasard et d'argent, le rôle de l'État et sur la liberté et la responsabilité des citoyens*" [The Ombudsman's Commentary on Gambling, the Role of the State and the Freedom and Responsibility of Citizens – in French only].

This document highlights the importance that, in any democracy, must be given to the preservation of freedom and to citizens' responsibility. While maintaining a respect for free will

and the intelligence of the individual, I proposed several measures that I believe could improve the situation. These include providing scientifically proven factual information that is as objective as possible, government corporations adopting ethical principles with respect to the promotion, supply and marketing of products that could lead to over-consumption, as well as setting a maximum profit threshold. Finally, in the name of solidarity, I proposed that the State provide assistance to people suffering from compulsive gambling problems.

In my opinion, the measures announced by the president of Loto-Québec in March 2002 are a step in the right direction, especially regarding:

- Proper information on the chances of winning for each lottery product;
- Improvements to the advertising code so that Loto-Québec now has an actual code of ethics;
- A profit freeze for the next few years.

Meanwhile, going back to the goal of preventing injury, the Québec Ombudsman analysed eleven draft regulations, three draft bills and thirty-eight parliamentary bills in fiscal year 2001-2002[1]. I presented a brief to the parliamentary committee on three of these drafts:

- Parliamentary bill to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the Protection of personal information in the private sector, the Professional Code and other legislation.
  Brief presented August 21, 2001.
- Draft bill regarding the Act respecting the Québec correctional system.
  Brief presented February 20, 2002[2].
- Draft bill on the Québec health card.
  Brief presented March 14, 2002[3].

Always aiming to promote a preventive approach, I announced in my Strategic Plan my intention of developing exchanges with government departments and agencies. Among other things, I agreed to present them with all drafts of reports before making

1. See appendix section 8.
2. See section 2.1.6.
3. See section 2.2.5.

my final public recommendations. Finally, I encouraged my colleagues to participate in committees following up on my recommendations. There are similar committees working at the Ministère de la Sécurité publique, the Ministère du Revenu and the Ministère de l'Éducation.

With that in mind, I also stressed the promotion of mechanisms used to process claims within the Public Administration. To that effect, my colleagues and I developed a guide for which I am particularly proud, entitled: *A Legitimate, Credible Complaints Office – Complaints processing in governmental organizations*.

Since February 2002, the guide has been presented to various government departments and agencies and was very well received. It explains the purpose and importance of a complaints-processing mechanism, and lists eight principles inherent in fostering the effective processing of complaints and the improvement of services:

- Accessibility;
- Simplicity;
- Speed;
- Confidentiality;
- Procedural equity: attentiveness, rigour and transparency;
- Clear and complete motivation;
- Follow-up of recommendations;
- Systemic concern.

I hope that this tool will be useful for the creation or the improvement of complaints offices within the government infrastructure. So far, I have had only positive feedback, which tells me that I have filled a real need. I am committed to supporting all those who offer or want to offer this service to citizens and have received a number of requests already.

Some Recommendations Finally Accepted

In fiscal year 2001-2002, two major case files came to a close following interventions that have lasted many years.

The Duplessis Orphans case

On June 30, 2001, after years of talks, an agreement was finally reached between the Comité des orphelins et orphelines de Duplessis and the Québec government.

Following this agreement, the *"National Program of Reconciliation with the Duplessis Orphans"* was created. This program, largely guided by the Québec Ombudsman's 1997 recommendations, outlines the conditions for granting individual financial assistance, without admission of fault, to people unjustly admitted to various psychiatric hospitals between 1935 et 1964.

A joint committee is to verify eligibility and set the amount that each orphan may receive. This financial assistance includes a lump sum of $10,000, plus $1,000 for every year of internment.

Meanwhile, as the Ombudsman had requested, the Regulation respecting Income Support, Employment Assistance and Social Solidarity was amended so as not to penalize welfare recipients benefiting from the compensation program. Thus, these people will not see their State benefits reduced in any way.

While I am very happy about the ruling, I only regret that some of the victims of sexual and physical abuse were not acknowledged.

Shared accommodations

Following repeated requests by the Québec Ombudsman and welfare rights groups, the government has finally agreed to abolish the penalties for shared accommodations that had been imposed on welfare recipients for over 12 years now.

In the 1990-1991 Annual Report, the Québec Ombudsman questioned the appropriateness of the measure. The report asked why people should be penalized for being resourceful enough to have improved their living conditions despite the inconveniences of sharing one's home (including loss of privacy, etc.).

In 1998, the reduction for shared accommodations was struck down for single parent families. In July 1999, the Ombudsman asked the Minister for Social Solidarity to extend the decision

to all welfare categories. In February 2000, during the Québec Summit on Youth, the government announced they were reducing the penalty by 50% (to $50 a month instead of $100), starting the following June.

In the 1999-2000 Annual Report, the Québec Ombudsman concluded that "They [disadvantaged persons] should be among the first to benefit from the surpluses generated by the growth of the economy".

Finally, in March 2002, while presenting the budget, the Minister of Finance announced the total abolition of the penalty.

I estimate that approximately 60,000 homes will now see their living conditions improved.

One Recommendation Rejected
Access to subsidized services in day care and childcare centres

In the 1999-2000 and 2000-2001 Annual Reports, the Québec Ombudsman discussed the issue of access to reduced contribution spaces in day care and childcare centres. Temporary corrective measures were proposed at the time to the Minister of Child and Family Welfare, such as the establishment of priority criteria for the distribution of spaces, the inclusion of certain private, for-profit day care centres into the program and increasing tax credits for day care services not registered with the program.

In 2001-2002, the Ministère confirmed its desire to maintain the status quo and its refusal to grant priority access in accordance with provincial standards. It justified its actions by citing an unwavering respect for the principle of universal access to day care services and to the autonomy of its childcare centre partners. I believe, however, that the current, prevailing situation works against the universality of the program.

Furthermore, despite the announced accelerated investments in the construction of new childcare centres in the 2002-2003 budget speech, I feel that the situation remains unacceptable and unfair to those who have no access to subsidized services.

The Minister also rejected other recommendations that seemed too cumbersome and costly. She did, however, agree to take whatever measures necessary to inform parents about other existing assistance programs and spaces available.

Conclusion

The Québec Ombudsman, as an institution, has been helping the people of Québec for the past thirty-three years. Over time, the number of Ombudsman interventions has increased, entering many spheres of influence.

Since I was appointed Québec Ombudsman, I have noticed that my mandate of supervision has been mainly involved in issues of fairness and equity. This is why I have chosen to make it the theme of this year's report. The message I would like to transmit to the Administration is one of openness and flexibility.

I remain convinced that upholding the best interests of all our citizens is a concern we all share. Still, the bureaucratic dynamic sometimes leads to the eventual development of automatic reactions whose results directly oppose this goal.

At this point, it is time for a renewal of both attitudes and practices: these must be adapted to a variety of clienteles.

This is what I understand my mission as Ombudsman to be and it is in that spirit that my 2001-2004 Strategic Plan sets out the goals and orientations that I hold dear and that have guided, and will continue to guide, my actions over the coming years.

2

Government Departments and Agencies addressed in this Report

2.1
Departments

2.1.1

Le ministère de l'Éducation

The mission of the Ministère de l'Éducation is to provide citizens with access to the educational services they require for their personal development and to play an active role in society. Thus, the Ministère collaborates with agencies and institutions within the public and private high school and CÉGEP networks.

In a March 31, 2001 press release regarding the publication of his list of Services to the Public, the Minister reminded the public of the scope of services offered by the Ministère, especially with respect to loan and bursary applications addressed to the Student Financial Assistance Program and requests for transcripts and official diplomas for studies carried out in Québec. He also committed himself to guaranteeing the quality of these services, stressing high levels of accessibility, low response times and information reliability.

Co-operation Between the Ministère de l'Éducation and Schools

During the 2001-2002 fiscal year, several citizens appealed to the Québec Ombudsman to denounce the Ministère's inaction with respect to their difficulties with issues that fell under its responsibility.

Thus, some citizens were unable to obtain official confirmation of their studies. After having approached the Ministère de l'Éducation, they were sent by the latter to the schools, who sent them back to the Ministère. Furthermore, the data was sometimes no longer found in the Ministère's registries, nor in the schools' registries. In these cases, there was no communication between the so-called partners to verify the reasons for the missing information or to confirm the answer to be given to the citizen. If the data were unfortunately missing from both registries, it was assumed that the citizen had not completed any studies, when in fact, following the fusions and redesign of the school boards, the state of the archives left something to be desired. Errors could also have slipped in during paper-to-computer data transfers.

The Québec Ombudsman believes that obtaining official transcripts, diplomas and duplicates confirming studies carried out in Québec is an essential service since it can directly affect a person's ability to enter the workforce.

Since the Ministère is the highest authority in terms of recognition of studies, it is responsible for ensuring that the system works smoothly. Thus, its mandate includes seeking out and eliminating obstacles to the process. This is even more important when the Ministère insists that it provides accessible services and reliable information.

The Ministère is Invited to Abide by the Terms of the Act Respecting Administrative Justice

Decision was hasty.

A number of student teachers, having completed their teaching internships appealed to the Ombudsman following the refusal of the Ministère de l'Éducation to issue their teaching certificates. They claimed to have been treated unjustly since the Ministère's decision was based on a negative report from the Commission scolaire that they said did not follow all the rules for evaluating internships and guiding student teachers.

An inquiry revealed that the Ministère upheld recommendations without ever verifying them, either with the Commission or the school. Neither were the student teachers asked to comment.

The right to a fair hearing.

The Education Act gives the Minister the power and responsibility to grant the right to teach to any person who fulfils the requirements outlined in the statutes. The Minister therefore has the final say, not the Commission. Any decision by the Ministère regarding a person under its jurisdiction must be made in accordance with the terms of the Act respecting Administrative Justice, which obliges the Ministère to inform the student teacher of its intent to refuse to issue a certificate. The Ministère is required to invite the student to present his or her comments and to produce the relevant documentation. Furthermore, it must ensure that procedures are followed and duties are carried out in all fairness.

Process was changed.

Following the Ombudsman's intervention, the Ministère agreed to modify some of its procedures to meet the terms of the Act respecting Administrative Justice. Thus, from now on, before

rendering its decision on the refusal to issue a teaching certificate, the Ministère must invite the student teacher to express his or her opinion on the Commission's recommendations and to produce the relevant documentation. Furthermore, the Ministère has provided its regional supervisors with training on the application of the Act.

Student Financial Assistance

In the early 1960s, in order to promote access to higher education, the Québec government created the Loans and Bursaries Program. Today, the program is managed by an autonomous service unit within the Ministère de l'Éducation known as "Student Financial Assistance" or SFA. Its goal is to provide the less affluent with access to higher education and high school vocational programs and thereby affirm the right to equal opportunities for all citizens.

The government program is auxiliary in nature, whereby students are ultimately responsible for the costs related to their studies. Thus, when students, and – where applicable – their parents or spouses, lack sufficient resources, the government may provide assistance in the form of a loan or bursary to cover basic expenses for one year of study.

On November 2, 2000, Student Financial Assistance was heard for the first time by the Commission sur l'administration publique, to account for its administrative management. At the same time, the Ombudsman submitted a report to the Ministère recommending that certain measures be put in place to correct or improve the situations brought to his attention.

In order to follow up on these recommendations, a subcommittee was created offering both agencies the chance to discuss the difficulties that had emerged over the course of the year with respect to the application of the program. This would allow them to catch problems as soon as they appeared and even prevent them from occurring. It is worth emphasizing that during these meetings, SFA demonstrated an impressive degree of openness and collaborative spirit.

Improvements Made Following the Ombudsman's Recommendations

More transparent review processes

Should a student declare a lower income than he or she really earned, Financial Assistance no longer automatically suspends payment. From now on, the student will have a period of sixty days in which to provide an explanation if he or she wishes to contest the allegations. By the same token, if the income listed on the form was greater to that actually earned, assistance is increased accordingly and the student will receive retroactive payments.

The notion of administrative error is acknowledged and included in the law

In the summer of 2001, the Act respecting Financial assistance for education expenses was amended to include a clause on the matter of administrative errors. From now on, a student receiving a bursary for an amount that he or she is not entitled to does not have to reimburse this amount if it is due to an error that he or she could not have reasonably been aware of.

The Unité des droits de recours

Meanwhile, the Québec Ombudsman had pointed out major gaps in the accessibility, credibility and effectiveness of the recourses available to students. The creation of the Unité des droits de recours in 2001 appears to have been a means for SFA to fix most of the problems brought to its attention.

The unit brings together the Complaints Bureau, the Review Bureau and the Secretariat of the Examinations Committee for Exceptional Cases. The unit falls under the jurisdiction of the Deputy Minister, giving it the independence it needs to process complaints impartially, credibly and effectively. Furthermore, its new position allows the Complaints Bureau to make recommendations to higher authorities in order to extend certain corrective measures to everyone affected by a particular issue.

Shorter waiting periods for processing requests for exemptions

Another of the Ombudsman's recommendations hoped to reduce the waiting period for processing requests for exemptions to 45 days. The delays were due on the one hand to the Secretariat, which was responsible for preparing the cases to be submitted to the Examination Committee for Exceptional Cases and on the other hand, to the time taken by the Committee to study the case and then submit it to the Minister for his decision. According to Student Financial Assistance, since the new measures have been set up, the waiting period over the past year has already dropped well below 45 days. The Québec Ombudsman plans to continue monitoring the situation.

These improvements have undoubtedly contributed to the reduction in the number of complaints received in this sector, which fell from 441 in 2000-2001 to 298 in 2001-2002. These efforts nonetheless deserve to be pursued, as the following examples demonstrate.

The Review Bureau: Finally More Independent

Certain decisions occasionally need to be reviewed

Citizen's disability denied.

Wishing to improve his chances of entering the workforce and thus better provide for his family, a man who had suffered permanent damage to one leg following a serious infection decided to go back to school in 1996-1997. He requested financial assistance under the *Programme pour élèves atteints d'une déficience fonctionnelle majeure* [program for severely disabled students]. The program is aimed at anyone suffering from a disability causing significant limitations in accomplishing daily activities and allows a student to receive all the financial assistance he or she requires in the form of a bursary only.

Following an analysis of the case file, SFA refused the request, alleging that his handicap was not a major functional disability as defined in the Statutes. When the student inquired about the reasons for the decision, he was told that the prosthesis he uses appeared to compensate for his difficulties in getting around.

The student decided to pursue his studies anyway, with financial assistance that included a loan. After graduation, and despite numerous steps taken, he was unable to find employment. Unable to repay his loan, he appealed to the Ombudsman.

He first explained how his disability made it difficult to look for a job. He requires assistance to prepare his meals, for personal hygiene, getting around and commuting. He cannot walk more than 50 metres with his prosthesis without becoming exhausted and, most especially, without incurring a high risk of triggering the same infection that had caused the leg to be amputated in the first place. Furthermore, he is allergic to the medication that could slow the infection, which can be fatal.

Medical report not specific enough.

The Ombudsman noted that the medical report in his file gives few indications of the complications related to his disability. Because of this, SFA did not have the information it needed to properly evaluate the student's condition. On the advice of the Ombudsman, the citizen asked his doctor to fill out the form again, in more detail. New document in hand, the citizen approached the Review Bureau. His request was rejected as the deadline had long passed.

Initial decision was changed and the citizen's disability finally recognized.

Considering the citizen should have been admitted to the program the first time around, the Ombudsman appealed to the Review Bureau to study the case.

Following the above intervention, the student was retroactively admitted to the program and his $31,000 debt written off.

Valid reasons

Students penalized for reasons beyond their control.

Two students appealed to the Ombudsman because they had been waiting four months, since the beginning of the 2001-2002 school year, to receive financial assistance. SFA refused to calculate how much to give them since their father had not provided all the information required regarding his income. The latter had, however, explained in writing the reasons why he could not list his exact income for the year 2000: he had declared bankruptcy that year, was having considerable difficulty with his tax returns and had no idea what the exact amount of his income was at the moment. Despite these explanations, SFA upheld its refusal to calculate the amount.

The Ombudsman felt that the father's reasons were valid and that his two daughters should not be penalized for a situation that was utterly beyond their control. Upon request, the Review Bureau arranged for Financial Assistance to begin processing the file, on condition that the father provide both the financial statements of his trustee showing the assets and liabilities of the bankruptcy as well as the appropriate form, duly signed, indicating his estimated income for the year 2000, based on his earnings from the previous year. Upon receipt of the documents, the assistance was finally issued.

Assistance was issued.

Mix-up costs citizen $30,000

A severely hearing impaired student needed an interpreter to follow a training program. The high school level vocational training program began in February 2000 and ended in March 2001.

In order to defray the costs of the interpreter, he applied for financial assistance under the *Programme d'allocation pour besoins particuliers* [subsidies for special needs]. He then hired his brother for the job and both parties signed a service contract for each semester, in accordance with the class schedule for the training program.

Once the program was completed, the interpreter appealed to the Québec Ombudsman; he had performed 1800 hours of work but only been paid for 600. SFA refused to consider the missing 1200 hours, and based its decision on two points.

The allowance was given for 600 hours of work instead of 1800.

Firstly, the application for 1999-2000 was handed in after the deadline had elapsed. Therefore, it was not possible to grant the allowance for that semester. Secondly, some of the service contracts for the year 2000-2001 listed hours "worked" that did not correspond to the class schedule given.

The Ombudsman believes that the reasons given by the student to explain the tardy submission of his application were valid. In fact, despite several attempts to find an interpreter, he could not find one available, so he finally asked his brother, who agreed to help him out. This explained why he was late in submitting his application, since he had to find someone to perform the service first.

An error occurred in filling out the form.

Meanwhile, the investigation revealed that the brothers were not responsible for the errors in the service contracts. Rather, it was the school who made a mistake in filling out the form. It must be added that high school vocational programs have a wide variety of training programs with irregular class times, which do not always correspond to the periods defined by Financial Assistance. Furthermore, the forms are badly adapted to these programs.

The work was finally recognized.

In light of this new information, the Review Bureau accepted the reasons given for the late application and the service contracts were corrected. SFA then recognized the 1800 hours of work performed by the interpreter and added an additional $30,000 to the initial $13,000 already paid.

Financial Assistance Withdrawn Because Document Not Presented

A single parent student applied for financial assistance for the year 2001-2002. She was living alone with her two children and was about to give birth to a third. The assistance was granted but, in May 2001, SFA began to doubt her status as head of a single parent household and asked for additional documentation, without which her financial assistance would be withdrawn.

Faulted through mere assumption.

She therefore provided the documents requested within the required deadline, with the exception of the children's declarations of birth, since she had submitted them to the Registrar of Civil Status when each child was born. She unfortunately had not kept any copies. The student found it odd that Student Financial Assistance required these items since she had already provided the birth certificates, which were official documents from the Registrar. She explained that she could not provide the declarations of birth in such a short period of time since she would have to make a written request in order to obtain a copy. Despite these explanations, SFA cut off her payments. Worried that she would no longer be able to provide for herself and her children, the student appealed to the Québec Ombudsman.

At the Ombudsman's request, assistance was restored.

The Ombudsman pointed out that the reason given by the student for not being able to produce the missing documents within the time requested was credible. The Ombudsman felt that withdrawing assistance based on mere assumption was abusive. At the Ombudsman's request, the payments were reinstated.

Moreover, concerned with the entire procedure, the Ombudsman questioned the relevance of requiring declarations of birth for children. SFA considers these documents to contain information not found on the birth certificates, such as the address of the father, and which they say are necessary for their background checks.

An agreement was finally reached: if an applicant cannot produce a declaration of birth, SFA from now on will accept the "Act of Birth" document issued by the Registrar, for information purposes. This is a more complete document than the "Birth Certificate" and contains essentially the same information as the declaration.

The solution: a similar document that is always available.

2.1.2

Le ministère de l'Emploi et de la Solidarité sociale

The mission of the Ministère de l'Emploi et de la Solidarité sociale is to combat social exclusion and poverty by providing financial assistance to persons without sufficient resources to meet their needs.

Furthermore, Emploi-Québec, an autonomous service unit within the Ministère, offers labour development and employment-assistance services.

Since January 2002, the responsibilities covered by the Ministère have been shared by a number of Ministers. The Minister of State for Social Solidarity and the Minister of State for Education and Employment are aided by a Minister for Employment and a Minister for the Elimination of Poverty and Exclusion.

In fiscal 2001-2002, the Québec Ombudsman received 2,131 requests for interventions, compared to 2,624 the previous year. This drop can be explained in part by a reduction in the number of employment-assistance recipients over the past year. Similarly, the rate of valid complaints continues to fall.

The Fight Against Social Exclusion

During the period discussed in this report, the Québec Ombudsman noted an increase in requests from people in crisis situations. Mental health problems, violence, drug abuse and alcoholism are on the rise and carry particular difficulties.

In his 2000-2001 Annual Report, the Minister suggested providing this group of citizens with support and assistance for social rehabilitation. In January 2002, he therefore issued a directive regarding social support with the aim of using any means available to steer citizens toward government agencies that could help them reach social and economic independence.

Despite these initiatives, the Ombudsman is still receiving requests for intervention from people who, for various reasons, are unable to meet set requirements and standards. These citizens at risk thus find themselves in dire financial straits, as the following cases demonstrate.

Citizen refuses retirement pension

Welfare was withdrawn.

The Ministère cut off welfare payments to a citizen because she refused to correctly and realistically fill out a request for a retirement pension at the Régie des rentes du Québec.

The woman was entitled to a retirement pension.

The 62-year-old citizen has been entitled to a monthly retirement pension of $365 for two years now. The Ministère was to pay her the difference between this amount and the amount she was entitled to through the employment-assistance program (welfare). But the woman insisted she never stopped working, despite the fact that she retired ten years ago. She even claimed that her earnings this year would exceed $10,000. The Régie therefore automatically rejected her application. The Ministère was aware of the situation but, its hands tied, cut the citizen's payments in an attempt to force her to react.

The woman then appealed for assistance several more times and wrote letters expressing her confusion and dismay to the various departments of the Ministère. After two months of not receiving any payments, she appealed to the Québec Ombudsman.

Legally, the Ministère had the right to direct the woman to the Régie des rentes, since she had already contributed to the pension plan for many years. Cancelling her financial assistance payments could therefore be justified. However, the citizen had no income, and was eligible for employment-assistance in addition to her retirement pension.

The Ombudsman therefore asked the Ministère to temporarily reinstate her assistance while they performed a more thorough investigation as to why the woman was being so insistent.

At first, the request was denied. The civil servants justified their refusal saying it wasn't fair to other recipients. A formal order was needed from the Director General of Income Security before the Centre local d'emploi (CLE) would finally agree to reinstate her assistance payments.

The Ombudsman then met with the citizen and offered to help her fill out the retirement pension application form, but she refused any form of assistance in that matter. She was truly convinced that she was still working and believed she could prove it by producing old papers which she pulled out of a plastic shopping bag, where they had been thrown haphazardly. Unfortunately, there was nothing that could be said to convince her otherwise.

She is convinced that she is still working.

Faced with such an impasse, the Ombudsman suggested to the Ministère that perhaps the citizen's application could be studied as *if* it had been filled out correctly. This way, the Régie would pay the Ministère the amounts that the citizen was entitled to, and the statutes would be respected. In the meantime, the woman would continue to receive her welfare cheques from the Ministère.

Assistance was reinstated and talks are underway.

In an attempt to extend this solution to the rest of the system, the Ombudsman will continue its interventions to ensure that the Ministère does not allow other citizens at risk to find themselves in the same situation.

Citizen refuses to show lease

A citizen, severely disabled following a stroke twenty years ago, was receiving assistance for people with severely limited capacity for employment. At some point, he moved but remained within the territory covered by the same CLE. His employment-assistance officer asked him to provide a lease. He stubbornly refused, and received a notice that his payments would be cancelled.

The citizen refused to leave his home and explained that he was on the Mafia's hit list. He claimed to be a long-time informant to the Canadian Secret Service. He accused his employment-assistance officer of being on the payroll of foreign torturers.

He had to keep his place of residence a secret as he believed his life was in danger.

The man panicked at the idea of finding himself penniless and sent e-mail after e-mail to the Québec Ombudsman. A delegate contacted the CLE and checked whether they knew the citizen and whether he was entitled to last-resort financial assistance. A supervisor confirmed that he was eligible and acknowledged that the man was eccentric. He agreed to reactivate the citizen's file and will try again sometime this year to obtain the required document.

Assistance was withdrawn, then reinstated considering the citizen's distress.

High price to pay for bus pass

The citizen needed a bus pass to continue her therapy.

An alcoholic and drug-addicted woman was the victim of a sexual assault at some point in the past. She was regularly hospitalized for mental problems. She underwent a variety of therapies every month and needed a bus pass to get to her appointments.

Her assistance would be cut off if she didn't justify her movements every month.

Her social assistance officer insisted that she show up every month at the CLE to justify the cost of the bus pass and to provide other administrative information. These requirements increased the citizen's anxiety level; she soon became convinced that the officer was following her everywhere she went. She had it all written down in a notebook. The officer told her that her welfare would be cut off if she did not follow the requirements.

The citizen was very worried when she appealed to the Ombudsman.

In light of the situation, the Ombudsman asked the Ministère to reduce the number of checks imposed on the woman. The request was finally – though hesitantly – granted.

Unable to collect necessary proof

Father and son found themselves destitute after selling their mobile home.

A citizen suffering from agoraphobia also occasionally experiences panic attacks. The Ministère withdrew his assistance payments because he had a surplus asset: a mobile home located very far from his actual place of residence. He had left the area so that his intellectually-challenged son could have access to services that were better suited to his condition.

After the Ministère's decision, the citizen then sold his property for the balance of the mortgage. But, based on the municipal assessment, the Ministère believed the property was worth more. It therefore calculated the amount that it believed the man should have received from the sale. As a result, the citizen and his son were left ineligible for last-resort financial assistance.

Dismayed, the man said that he was unable to provide the documents requested by the Ministère. He visited food banks before finally appealing to the Ombudsman.

An inquiry revealed that the mobile home was in terrible condition and was barely worth the value of the mortgage. Furthermore, the citizen had attempted in vain to sell his property at a higher price over the Internet. With this proof in hand, the Ombudsman got the Ministère to overturn its decision to cancel assistance to the man and his son.

The calculations were redone and assistance restored.

The Ultimate Goal of Emploi-Québec

One of the goals of the Ministère is to offer labour development services. In the past, Emploi-Québec experienced severe difficulties in managing the budgets for training programs. It is thus natural, even desirable, for the unit to begin preparing forecasts and setting out guidelines in order to prevent overspending. However, applying standards should not, under any circumstance, override the ultimate goal of Emploi-Québec, especially in terms of assisting citizens in entering or re-entering the workforce.

Overcautiousness leads to rejection

In May 2001, a citizen signed up for a sales training course set to begin in the fall. He applied to Emploi-Québec for the financial assistance he needed to take the course. In June, the CLE officer informed him that their budget no longer covered this type of training. She added that his name would be placed on a waiting list but that there was little hope for this year. The man was stunned that the Ministère's coffers for his area were already dry, it being still the beginning of the fiscal year. He expressed his doubts to the Québec Ombudsman.

Emploi-Québec refused to authorize a training session.

When the Ombudsman intervened, it turned out that the CLE did in fact have sufficient financial means to accept requests for training programs but was being overly cautious in granting money for certain types of training, particularly sales courses.

The CLE was overly cautious in managing its budgets.

The Ombudsman is aware that the Ministère is responsible for managing its own affairs and cannot accept all requests for assistance. But caution does not equal automatic rejection. In this case, the course was not expensive and the living allowance only covered the months of December 2001 to March 2002. Furthermore, the rate of hire in this employment sector can reach up to 90%.

The decision was amended.

At the Ombudsman's request, the centre reviewed the citizen's file and amended its initial decision, taking into account specific information from the file and the ultimate aim of Emploi-Québec. The citizen was able to begin his training in the fall, as he had hoped.

2.1.3

Le ministère des Relations avec les citoyens et de l'Immigration

The Ministère des Relations avec les citoyens et de l'Immigration oversees demographic, economic, cultural and civil issues in Québec society. It is responsible for the smooth integration of new arrivals, and also promotes greater openness to diversity. Furthermore, it is also in charge of publishing and distributing complete and high-quality government information, mainly through its directory of government programs and services. Finally, it manages the civil status registry, thus ensuring the integrity of each citizen's identity.

The Registrar of Civil Status

Increased Delays Due to Stricter Security Measures

During the 2001-2002 fiscal year, the Ombudsman noted a substantial increase in the number of complaints about the Registrar of Civil Status. In the fall of 2001, following the events of September 11 in the United States, significant administrative and legislative amendments altered the practices of the Registrar of Civil Status and had a major impact on the waiting period for processing applications. Thus, delays that had already increased in the summer of 2001 due to changes to the computer system and the installation of a new telecommunications system were exacerbated due to tightened security measures for controlling the identification of people and the issuance of Civil Status acts and certificates.

The new security measures require, among other things, justification for requesting a birth or death certificate, the inability to submit applications by Internet and justification for requesting faster service.

Besides the amendments to the Québec legislation and changes to the Registrar's current practices, federal measures that also aim to ensure greater security in issuing passports have also caused

an unprecedented demand for birth certificates. While parish certificates were once accepted for the purposes of acquiring a passport, a certificate issued by the Registrar of Civil Status is now required.

Despite these changes, the Québec Ombudsman has noted that the Registrar of Civil Status has adapted well and that it has doubled its efforts to recover its normal rhythm and to respond to applications as quickly as possible.

Information Initially Provided Occasionally Incomplete or Erroneous

Aside from the delays, the Ombudsman has also noted certain gaps in information passed on to citizens. In fact, it appears that information provided by telephone receptionists and help desks is often incomplete or wrong. The following case is one example of this.

No birth certificate for this citizen.

A citizen applied for a birth certificate in order to obtain a passport for a trip she planned to take a few weeks later. The clerk who processed her request informed her that there was no family name listed for her in the Civil Status registry. This was because the woman was born prior to the establishment of adoption legislation and was informally adopted as per common practice at the time. She had always used her adoptive father's surname and had never gotten her Act of Birth changed.

She received an incomplete and offhanded response.

The citizen asked that she be issued her birth certificate, even without a surname. The clerk said it was impossible under the circumstances. She insisted, since she was going abroad and her departure date was fast approaching. The clerk offhandedly answered that before she could get a birth certificate, she would gave to have her surname added to her Act of Birth by officially changing her name, which would take a long time and therefore she should get used to the idea that she would have to take her trip some other time.

There was another way.

Following the Ombudsman's intervention, the citizen was finally able to obtain her certificate, even without a surname on it. The document, coupled with a sworn statement attesting to the use of her name, allowed her to get her passport and travel as planned.

The Registrar of Civil Status was advised of the breach and is actively working on setting up measures to ensure that citizens are given the proper information.

2.1.4

Le ministère du Revenu

The role of the Ministère du Revenu is to collect income and consumption taxes on behalf of the Québec government in order to finance public services. It also advises the government on fiscal and socio-fiscal policies.

The Ministère is furthermore responsible for allocating funds granted to citizens by the government through various tax-related social programs such as the Real Estate Tax Refund program, Québec Sales Tax Refund program, the Shelter Allowance program and the Parental Wage Assistance program.

Its mandate also includes collecting contributions on behalf of agencies such as the Régie des rentes du Québec [Québec Pension Plan], the Régie de l'assurance maladie du Québec [Québec health insurance] and the Commission des normes du travail [labour standards commission]. In addition, the Ministère collects the Québec Goods and Services Sales Tax. Finally, it administers the Support-Payment Collection program.

Taxation

Bill 14: Act to Amend the Act Respecting the Ministère du Revenu and Other Legislative Provisions

The Québec's Ombudsman's mandate includes commentaries on parliamentary bills and draft regulations in order to prevent situations that could prove harmful to citizens. This is how the Ombudsman came to intervene in the bill to amend the Act respecting the Ministère du Revenu and other legislative provisions as regards the Protection of confidential information in fiscal 2001-2002.

The bill's main objectives are to clarify the terms of the Act respecting the Ministère du Revenu that relate to the confidentiality of tax-related information and to co-ordinate their application with those of the Act respecting Access to documents held by public bodies and the Protection of personal information. Two main topics caught the eye of the Ombudsman.

Divulging information to the police

Under the guise of the fight against organized crime, the bill plans to authorize the staff of the Ministère du Revenu – duly designated in the statutes – to divulge to the police information contained in tax files, without the consent of the person involved. Since these terms constitute a major breach in tax information confidentiality, the Ombudsman insisted that only a highly extraordinary case should permit this type of divulgence, in addition to the strict administrative supervision it would normally require.

On February 22, the Minister of Revenue announced changes to the bill that would oblige the Ministère's employees to obtain court authorisation before divulging information to the police.

These changes meet the precautions recommended by the Ombudsman.

The powers of the Québec Ombudsman

The Public Protector Act grants the Québec Ombudsman and her staff all the powers and immunities listed in the Act respecting Public inquiry commissions, except that of imposing imprisonment. This is why, in order to properly conduct an investigation, the Ombudsman and her staff is granted the power to subpoena witnesses.

In studying the bill, it became apparent that one of the terms could lead to confusion with respect to the power to subpoena witnesses such as the Minister of Revenue or his employees. Even if the Ombudsman's staff do not formally use this particular process to obtain information over the course of their ordinary interventions, it is essential that the powers of the Québec Ombudsman remain intact since they constitute the foundation of her activities. The Ombudsman therefore expressed her concerns to the Minister, who agreed to modify the bill in order to remove all traces of ambiguity.

Information Received Not Always Perfect

An analysis of the complaints regarding the Ministère du Revenu in 2001-2002 pointed to two main sources of public dissatisfaction. One concerned the supply of information. In his 2000-2001 report, the Auditor General denounced the high rate of error in answers to taxpayers' questions from the Ministère.

The Ombudsman believes it is crucial that citizens have access to accurate information when they call the Ministère du Revenu. Furthermore, the information distributed in its brochures should properly reflect the appropriate tax regulations, even if said information does not constitute a legal interpretation of the law.

The Québec tax system is based on self-assessment. This principle assumes that each taxpayer is responsible for providing the required information regarding his or her own income, deductions and credits, calculating the amount of income and consumption taxes to be paid and to pay it. As the principle of self-assessment places a large responsibility on citizens of all ages and levels of education, subject to additional interest or penalties to be paid in case of error, it is the duty of the Ministère to ensure that taxpayers are properly informed, either through its communications staff or its publications. If this is not done, it is the citizen who will ultimately pay the price. Below are several examples of citizens who suffered from inaccurate information provided by the Ministère.

Life insurance company demutualization

In 1999, Canada's Finance Minister introduced legislation on measures allowing large, federally-regulated mutual insurance companies to "demutualize". This process would allow them to become public corporations, with the aim of improving efficiency and competitiveness. Following the "demutualization" of their mutual insurance company, certain people qualified as "eligible subscribers" received benefits in the form of shares in the new company.

Following "demutualization", eligible subscribers received benefits in the form of shares.

Recipients of shares under these circumstances would not be immediately affected, tax-wise. However, once any or all of the shares were sold, they would probably have to declare a capital income gain, which is normally equal to the sale price less the

If shares are sold, the capital gain is calculated differently.

purchase price. As the cost of the share after "demutualization" is presumed to be zero, the resulting gain would be equal to the sale price.

The information is only available on the Net.

Pursuant to a citizen's complaint, the Ombudsman determined that the information regarding demutualization was only available on the Ministère's web site and that neither the Guide to the Income Tax Return, nor the brochure on capital gains and losses made any mention of it. As not everyone has access to the Internet, affected taxpayers were now being charged for undeclared capital gains.

At the request of the Ombudsman, the Ministère agreed to add this information to the Guide to the Income Tax Return as well as to the brochure on capital gains and losses for the following year.

Standard notice leads to confusion

A citizen contested seizures carried out by the Centre de perception fiscale, despite the existence of a reimbursement agreement with the latter.

Any amount payable by a public body to a tax debtor may be allocated towards payment of the debt.

An inquiry revealed that the Ministère did not carry out seizures but rather used the compensation measures outlined in the Act respecting the Ministère du Revenu, which states that any amount payable by a public body to a tax debtor may be allocated towards payment of the debt. In practice, except in extraordinary cases, this process is automatic. Thus, the "seizures" carried out by the Ministère were in fact perfectly legal. Moreover, the citizen had been advised, both orally and in writing, regarding the possibility of such action.

However, upon studying the case file, it was noted that the standard notice confirming the reimbursement agreement was confusing. The relevant paragraph read as follows:

The information in the agreement was inaccurate.

"It is agreed that the Ministère can renegotiate the present agreement if a public body owes the debtor an amount that could be applied to the payment of the fiscal debt of the latter, pursuant to section 31.1.1 and subsequent sections of the Act respecting the Ministère du Revenu."

Upon reading the notice, it would seem that compensation always leads to a renegotiation of the initial agreement. However, this is not the case.

At the Ombudsman's request, the Ministère modified the notice, which now reads as follows:

"In accordance with section 31.1.1 and subsequent articles of the Act respecting the Ministère du Revenu, the Ministère may allocate to the payment of a fiscal debt any amount owed to the fiscal debtor by a public body. Should this occur, the Ministère will so inform the debtor and, if necessary, renegociate conditions of payment."

The standard notice was modified.

This new wording now forces the Ministère to notify taxpayers whenever the compensation measure is enforced.

Québec Sales Tax Rebate

In the summer of 2001, the Québec Ombudsman received a dozen complaints from young people denouncing the refusal of the Ministère to grant them their Québec Sales Tax Rebate.

To find out about the rebate eligibility requirements that apply to these young people, we had to consult the regulations in effect for fiscal year 2000, which have now been changed.

The first condition was that they couldn't be considered dependants of their parents. The legislation and the *Guide to the Income Tax Return* give the definition of a dependent child. In order to establish one's status as an "independent" child, one had to prove that the opposite of the definition was true.

To obtain the credit, one cannot be dependent upon one's parents.

During fiscal 2000, the Ministère issued an internal directive regarding the concept of dependent children for this particular tax rebate. However, the Ombudsman believed that the Ministère's position did not correspond to either the legislation in effect at the time or to the information given in the Tax Return Guide.

The Ministère interpreted the concept of dependent child.

Upon request, the Ministère studied the issue and finally concluded that the information in the guide relating to this topic was not sufficiently clear and retroactively awarded the rebate to all eligible persons.

The definition did not correspond to the information in the guide.

Decisions Require Flexibility

Aside from information-related problems, the Québec Ombudsman also noted a certain lack of flexibility in processing files that fall outside the established administrative norm. In these cases, the Ministère tends to close discussions with the excuse that the requirements were not met rather than attempting to find solutions adapted to the particular situation. Below are a few examples that illustrate this point.

Uncooperative landlord

A citizen who had benefited from the Shelter Allowance Program in 2000-2001 was experiencing a number of difficulties in 2001-2002.

The Shelter Allowance Program offers financial assistance to low-income households. In order to receive the allowance, the tenant must complete the application form and attach a copy of the lease or, if there is no lease, a statement issued by the landlord regarding the amount of rent paid.

The landlord refused to fill out a rental statement.

For the year in question, the landlord refused to fill out the rental statement required, giving no explanation for his refusal. The citizen attempted to convince him to do so, both by telephone and in person, but in vain. She decided to send in the application anyway, attaching a letter explaining why it was impossible for her to provide the required rental statement. Regardless of the citizen's explanations, the Ministère refused to grant her the allowance. She then appealed to the Québec Ombudsman.

The Ministère in turn refused to consider the Shelter Allowance application.

Upon investigation, the Ombudsman determined that the citizen's rental situation was identical to that of the previous year. Therefore, the Ministère already had all the information it required.

There was an alternative solution.

As the citizen had no control over the behaviour of her landlord and it was impossible to obtain the missing document, the Ombudsman asked the Ministère to show a little flexibility, as costs and rent could be confirmed in other ways. The Ministère finally agreed to review the citizen's request using a photocopy of a cashed rent cheque or a sworn letter if the rent was paid in cash.

Employer error

The pension plan statement was inaccurate.

In the spring of 1999, a citizen received his statement from the Régie des rentes du Québec, listing the years of contributions to the pension plan as well as his employment income. Upon reading the statement, he noticed that the employment income listed for 1992 was incorrect. He therefore requested that the Régie correct the error. The latter referred him to the Ministère du Revenu, who collects contributions from employers.

Upon investigation, it turned out that the initial error had been made by the employer, in transmitting a lower figure to the Ministère du Revenu than the amount actually retained as contribution to the pension plan. This caused a domino effect, whereby the Régie, based on the information obtained by the Ministère, then lowered the amount listed for employment income so that it corresponded to the contribution amount. This explained the mistake on the statement.

His pension would be reduced accordingly.

The error led to negative consequences for the citizen, as fewer contributions lead to a lower pension. He therefore began the process to have the issue corrected. After many attempts that dragged on for over two years, the Ministère informed him that his request was denied since the change was for the year 1992, and the statute of limitations had expired. The citizen finally appealed to the Ombudsman.

Because of the circumstances, the figure was finally corrected.

As soon as the Ombudsman became involved, he stressed to the Ministère that the initial error was in no way the fault of the citizen. Furthermore, the request for a correction, while it did pertain to 1992, was made upon receipt of document in 1999. The situation surely called for a more flexible approach.

The Ministère finally made the requested correction.

Surprise didn't turn out as expected

Told by the Ministère that she was entitled to a $762 refund.

A citizen's notice of assessment for the year 2000 stated that she owed $54 in taxes. When she inquired about the procedure to follow in order to pay the balance, the Ministère informed her that she was entitled to a refund of $762 for past years. After deducting what was owed for the year 2000, she was issued a cheque for $708.

There was a mistake: she now had to pay back the Ministère.

Three months later, the situation was not so pleasant. There had been a mistake: the $762 belonged to another taxpayer and she had to pay it back, with interest. Her sales tax refund would be withheld to pay part of the debt.

The Ministère refused to waive the interest and withheld her sales tax refund as payment.

Distressed, the citizen offered to pay $50 a month, since she had already spent the money she had received. She asked that the interest be waived, since the error was not her fault. She also asked that her tax refund be issued regardless. The Ministère refused, so she appealed to the Ombudsman, even more upset, as the new assessment letter did not mention anywhere that the error was the fault of the Ministère.

The citizen finally prevailed.

Following the Ombudsman's intervention, the Ministère agreed to waive both accrued and future interest, as long as the reimbursement agreement of sixteen cheques of $51 per month was respected. Meanwhile, now aware of the administrative error, the sales tax refund was finally issued to the citizen.

Computers and exceptions do not mix

As required, a citizen submitted cheques in payment of taxes due every quarter.

A business owner has to produce quarterly tax returns. He therefore submitted, by the required deadline, his tax return for the first quarter of 2001, to which he added a cheque for $14,000 as payment of taxes due. Some time later, upon noticing that the cheque was not cashed, he inquired about the delay. The agent said to wait awhile, since the processing delay might be due to the peak period for processing individual income tax returns.

Time passed and the citizen produced his second quarter tax returns. As the first payment had yet to be cashed, he attached two cheques to his declaration: one to replace the first uncashed cheque and a second for his second quarter taxes. He brought it all to the Ministère in person.

Time passed again, and the two cheques appeared to be lost. The Ministère then asked that the citizen bring the documents back, and that he issue new cheques. He therefore put a stop payment on the cheques already issued, and once again brought everything to the Ministère.

In September, the citizen produced his third quarter tax returns and went to deposit them with the Ministère, hoping that this time, everything would go smoothly, since this quarter he was expecting a refund of $11,000. In the meantime, the Ministère had finally traced the first cheques and attempted, unsuccessfully, to cash them. The citizen, meanwhile, began receiving regular statements of account requiring payment of taxes due, with penalties and interest adding up to $3,000. In December, at his wits' end, he appealed to the Ombudsman.

The system applied all the payments to a single period.

An inquiry revealed that the replacement cheques for the first two quarters had been applied to the first quarter only. The result was an overpayment for the first quarter and a debt for the second. Due to the system programming, the citizen's file indicated other similar refunds, as well as a number of balances to be paid, despite all the cheques he had sent. Furthermore, the inquiry revealed that the file had been transferred to the collections department.

At the Ombudsman's request, the audit department recovered the file in an attempt to clarify and rectify the many computer operations within the system. One week later, the problem was resolved... by humans!

The result: a vicious cycle of refunds and debts.

Collecting Support Payments

Partially in effect in the fall of 1995 and fully in May of the following year, the Act to Facilitate the payment of support established a universal plan for collecting support payments. The Minister of Revenue became responsible for enforcing the Act and endowed with powers meant to allow him to rectify weaknesses in the former policy.

In the beginning, things were difficult, and the Québec Ombudsman found it necessary to produce two Special Reports as well as a balance sheet addressing the various problems, along with recommendations for solving them[4]. Solutions were applied but the problems persisted, especially those regarding invoicing, advances, collection and old debts from the Ministère de l'Emploi et de la Solidarité sociale.

4. QUÉBEC OMBUDSMAN, *Universal support-payment collection system – Five year update*, Québec, May 2001, 35 p.

Changes to Laws and Statutes

Expected legislative changes: the possibility of seizing goods transferred to a third party to avoid paying support

Some debtors are very creative in their attempts to avoid paying support. One of the most common is to dispose of assets that could otherwise be seized, by transferring them to third parties (new spouse, child, company, etc.).

Until recently, in order to fight these bad-faith debtors, the Ministère had to go through the courts using a Paulian action. Better suited to bankruptcy cases, this recourse puts the burden of proof on the claimant, not only with respect to the transfer of property but also as to the intent of the debtor to become insolvent.

However, a support debtor could reduce his or her estate without necessarily becoming insolvent, by progressively transferring certain assets to a third party, for a small fee.

This inadequate recourse was therefore rarely used and creditors complained about the lack of action taken by the Ministère regarding the issue of the transfer of assets.

As of 1998, the Québec Ombudsman began recommending that the Act to Facilitate the payment of support include a means of annulling any disposition of assets or payment on the part of the debtor if said transaction resulted in a substantial reduction in his or her ability to pay support.

Following this recommendation, the Legislation Branch of the Ministère reviewed the matter and offered to introduce an administrative measure into the law allowing certain third parties (new spouse, minors, related persons) to be considered fully and equally responsible for a portion[5] of the support debt.

The proposal was finally accepted by the authorities within the Ministère. The amendment became part of Bill 9, sanctioned on December 20, 2001. The Ombudsman intends to closely follow the results and use of this new measure.

5. Calculations take into account the market value of the transferred assets and the price paid by the third party at the time of the transaction.

Changes to the statutes: Payability of locked-in retirement plans

During its investigations, the Ombudsman often noted that the Centre de perception fiscale experienced difficulties with bad-faith debtors, particularly those who had no bank accounts, who applied all their finances to their company or even worked under the table. To combat this, the Centre often had to set in motion a variety of collection measures. Of these measures consists of seizing amounts placed in pension plans.

Over the past year, the Ombudsman considered the possibility of proceeding directly to an immediate seizure by the Centre of amounts placed in additional locked-in plans. While these may be seized, these amounts were "frozen" until the debtor's retirement.

Following this intervention, the Régie des rentes amended its Regulation to allow for the immediate payability of savings held by support debtors, up to an amount equal to 50% of said savings.

Weak Invoicing

Eighteen-month saga

A debtor complained that his $967 tax refund was being withheld for outstanding debts, while, according to his calculations, he did not owe anything. Following an investigation, the Ministère issued an amount of $433, but the citizen insisted that he was still owed money. He was not allowed to argue his point of view, nor had he received a satisfactory explanation.

The Ministère seized an amount of $967.

The invoice is in fact incomprehensible and all the more complex, as it involves two creditors. A complete review and extensive calculations were necessary for the Ombudsman to conclude that the debtor had overpaid. The file had to go through many hands and each person came to a different conclusion. Several months passed and another $446 was refunded. However, the Ombudsman still did not agree with the balance and requested that it be calculated again.

In the end, he was owed a total of $1,419.

After eighteen months and a never-ending series of calculations, the Ministère refunded another $156, then a fourth cheque for $344 and eventually a final cheque for $40.

Weaknesses in System Programming

Current pension priority drops to second rank

Advances repaid before support payments can be received.

A citizen had not received her support payment for over six weeks. The Ministère replied that the computer system is programmed in such a way that "advances" must first be repaid. She did not understand and appealed to the Québec Ombudsman.

System programming has not been changed in six years.

In theory, current support payments must be issued first, in their entirety, prior to reimbursement of advances. In practice, however, the system's programming forces officers to perform a manual transaction so that the current payment is issued in full if advances are recorded in the file.

The Ombudsman has intervened on numerous occasions on this subject in the past. Computer adjustments, intended for November 2001, have been postponed again.

Advances: Still a Burning Question

In order to ensure that support payments are regular, the law allows the Ministère to grant an advance to creditors in order to avoid delays in cashing amounts deducted by employers. In most cases, this procedure does not cause any problems. Difficulties arise mostly when the debtor loses his or her job and the Ministère is not informed on time. The system then continues to issue cheques and if a new ruling retroactively annuls outstanding debts or support payments, the amounts already issued become a "debt".

If the ruling does not specify who is liable for repaying these advances, the Ministère claims the amounts from the creditors who have unknowingly received payments to which they were not entitled.

According to the Ministère, this sort of problem should no longer occur, as the letter sent to all parties when a file is opened informs them about the issue.

Moreover, the Ministère feels that it is the duty of the lawyers to be prepared and it is their responsibility to appeal to its Legal Department for the specifics of account statements and advances prior to filing a request.

However, it should be noted that the problem could arise many years after a file has been opened, thereby further increasing the risk of forgetting the procedure. Furthermore, the parties are not always represented by a lawyer. Consequently, the Ombudsman feels that more should be done. The Ministère should automatically advise all parties regarding the exact amounts that have been paid in advance, as soon as the officer realises that they have been paid while the debtor was out of work. This would allow them to take them into account during a motion for variation of a judgement.

Generosity has its limits

After waiving $15,000, she found herself in debt for $1,054.

In order to help out her ex-husband who was in financial difficulty, a creditor voluntarily signed an agreement waiving over $15,000 in outstanding payments and agreed to accept less money in support payments. Shortly thereafter, the Ministère informed her that she had to repay $1,054 that had apparently been paid to her and were now considered "unjustified advances". The citizen did not understand and refused to pay back the money. The officer transferred the file to the Centre de perception fiscale, adding a $70 collection fee to the initial amount owed. Furthermore, seizure proceedings were about to be put underway.

An inquiry showed that advances had indeed been issued. However, the citizen was not even aware of the existence of this procedure and therefore could not raise the issue before the judge in order to discuss it. The debtor was also acting in good faith since he had never been informed of the procedure either.

The debt was annulled.

After many months, the Ombudsman's arguments were finally accepted and the claim was annulled.

Employer obligations

The law states that an employer must deduct and transmit to the Ministère amounts determined by the latter. Should the employer not comply with this requirement, he or she also becomes jointly liable, along with the support debtor, for said amount.

Through numerous inquiries, the Québec Ombudsman determined that some employers did not meet their obligations, either due to negligence or bad faith. Below is one example.

Employer and debtor are relatives

The employer was not making the deductions at source.

A creditor complained that she had not received her support payment, despite the fact that her ex-husband worked full time for a well-known employer. The Ministère explained that the debtor was working for a relative and that there had been no answer to the two deduction notices that had been sent.

The Ministère proved lax in their duties.

An inquiry revealed that no measures had been taken to pressure the employer to obey the law. According to the officer, "We have to give the employer a chance to react." Meanwhile, the outstanding payments had reached over $30,000.

Employers will be better informed.

At the Ombudsman's request, the Ministère again tried to reach the employer and re-opened the case file. Since then, an awareness campaign was initiated all across Québec. With better information, we hope that the terms of the law will be understood and respected, thus avoiding many problems. In a systemic approach, the Ombudsman also requested that employers be informed of the risks they run if they do not comply with their obligations and that those who act in bad faith become equally liable for the support debt.

Old Debts to the Ministère de l'Emploi et de la Solidarité sociale

Ministère claims debts dating back to 1992 from children of deceased father

The Ministère claimed from the children the money their father was supposed to have paid for them.

A young woman appealed to the Ombudsman following an attempt by the Ministère du Revenu to collect close to $2,500 in support payments that her father should have paid in 1991-1992. This amount was being claimed by the Ministère de l'Emploi et de la Solidarité sociale, which was subrogated to the rights of the creditor spouse. The irony of the situation was that as the debtor was deceased, the amount was being claimed from his estate, his heirs being the beneficiaries at the time.

An inquiry showed that the ruling allowed for alimony that varied in accordance with periods of work and unemployment, when there were no payments to be made.

The proof was destroyed.

The man's estate has experienced great difficulty in collecting proof. In fact, after all these years, it has become impossible to determine the periods of unemployment, since all the data was destroyed.

The Ombudsman feels that it is unreasonable to claim old debts when the relevant proofs are impossible to find. The Legal Department at the Ministère agreed to waive the debt.

The debt was waived.

2.1.5

Le ministère de la Santé et des Services sociaux

The Ministère de la Santé et des Services sociaux sets the major priorities, objectives and policies for health and social services. It also enforces and evaluates them. Its main role is to determine provincial health and welfare goals and overall policies. It is responsible for distributing resources fairly among all the regions and ensuring that they are used efficiently, as well as overseeing the interregional coordination of services. The Ministère approves regional priorities and structural plans for departments and services. Finally, it also coordinates teaching and research and is responsible for public health protection.

Bill 27: The Health and Social Services Ombudsman

On June 8, 2001, the Québec Ombudsman submitted a brief before the Parliamentary Committee on Social Affairs regarding the Bill on the Health and Social Services Ombudsman, which is to replace the Complaints Commissioner.

Health network users will now have a more credible and effective recourse available to them. The bill in fact increases the jurisdiction of the Health and Social Services Ombudsman, which is better adapted to the new network set-up, and also makes handling of complaints more transparent with respect to medical, dental and pharmaceutical treatments.

The Québec Ombudsman prepared a set of recommendations on the role, responsibilities and hierarchical relationships between the main players involved, in this case the local Commissioner, the regional Commissioner and the Health and Social Services Ombudsman. As recommended by the Québec Ombudsman, a clause was included providing that the Board of Directors ensure that the regional Commissioner not exercise functions that were incompatible with those awarded to him as Complaints Commissioner and that the local or regional Commissioner present the Board of Directors with an annual assessment of his activities. She also suggested that the regional Commissioner now be accountable to the regional board, instead of to hospital administrators. The Minister has yet to follow up on this recommendation.

The proposal to grant the Health and Social Services Ombudsman parliamentary Ombudsman status was also not retained. The latter still answers to the Minister of Health and Social Services, as did the Complaints Commissioner.

Furthermore, the Québec Ombudsman had proposed that anyone connected to the user or showing an interest therein be authorized to inform the local or regional Commissioner of facts that could compromise the user's rights, especially where the latter was not able to act alone. This recommendation was also not retained. However, as requested by the Québec Ombudsman, the local and regional Commissioners will be able to intervene of their own accord when they become or are made aware of a situation over which they have right of review.

Finally, the Québec Ombudsman insisted that the Health and Social Services Ombudsman be obliged to respect the confidentiality of the information he or she holds and that only information essential for processing complaints be passed on to local or regional levels. An amendment was made to that effect.

Bill 36: The Public Health Act

On August 31, 2001, the Québec Ombudsman presented a brief before the Commission parlementaire des affaires sociales with respect to the Public Health Act.

The Québec Ombudsman first highlighted that public health protection is a complex issue and significantly affects aspects of the privacy and independence of the individual. The Ombudsman believes that Bill 36 presents a legal framework and departmental structure that will allow public health goals to be reached and a necessary balance to be maintained between the protection of fundamental individual rights and the significant powers conferred upon the government, especially the Minister of Health and Social Services and public health directors.

Meanwhile, the Ombudsman is satisfied that the presence of the Commission d'accès à l'information throughout the personal information management process offers sufficient guarantees regarding the protection of personal information. However, these guidelines fall short if the process of collecting and utilising personal information by medical personnel or

researchers does not maintain a maximum level of precautions to ensure full respect of the individual's privacy and independence. She therefore recommended inserting a clause in the bill in order to protect these fundamental rights at all levels of government. This recommendation was, unfortunately, not adopted.

The Québec Ombudsman also recommended that every vaccination require consent to be given before being registered in a central vaccination registry. She also suggested that information regarding the voluntary nature of the registration and citizens' rights with respect to the registry be posted at all vaccination sites and available in the form of a flyer. The Minister agreed to include a clause in the bill ensuring that adequate and sufficient information be distributed to the public. However, he did not feel it necessary to require that consent for registration be given at each and every vaccination.

Furthermore, the Ombudsman prepared three recommendations aimed at strengthening the credibility of the public health ethics committee in the eyes of the public. First, that the opinions of the committee be publicized, unless the Minister decides otherwise in exceptional cases. Second, that the Minister appoint the members of the committee after consulting with socio-economic groups that have demonstrated an interest in the field of public health. And third, that the committee members themselves elect a chairman and vice-chairman. The Minister amended and added precisions to the text of the bill in order to implement the above recommendations.

Finally, the Ombudsman proposed that the municipalities, along with departments and government agencies, be obliged to notify the appropriate authorities of situations that they are aware carry health risks or threaten public health. This change was introduced into the text of the bill.

Ministerial Goals for the Use of Control Measures: The Québec Ombudsman Comments

At the request of the Ministère de la Santé et des Services sociaux, the Ombudsman analysed the ministerial plan for the exceptional use of control measures such as restraint, isolation or quarantine and the use of chemical substances.

The Ombudsman opined that the stated principles and suggested tools should permit day-to-day operations to reflect a philosophy of intervention that was respectful of individuals within institutions of the health and social services network.

Besides the statement of principles, the Ombudsman commented on the application of control measures, which she felt should be based on ethics.

Thus, ethics committees within each institution could be an opportunity for reflection and analysis, for questioning practices and identifying alternate measures. She therefore suggested that the Ministère's goals provide for the establishment of an ethics committee within each institution to evaluate and follow-up on control measures. Said ethics committee should furthermore report on its work to the institute's board of directors, which would remain responsible for the evaluation process and follow-up with the regional board and the Ministère.

The Ombudsman also proposed that the follow-up committee include a representative of the Public Curator, as the latter represents a large number of people who might be subject to control measures. She also underlined the importance of the work of a committee composed of members of the Collège des médecins, the Ordre des pharmaciens and the Ordre des infirmières et infirmiers du Québec, whose mandate is to set guidelines for the use of chemical substances. Finally, she invited the Ministère to participate in the project and to chair the committee.

Aside from the last point, the Québec Ombudsman is satisfied that the action plan includes the establishment of standards for approving restraint equipment. This crucial procedure was addressed in a recommendation by the Ombudsman in 1998, in a Special Report to the Public Curator.

The Little-known Act Respecting Administrative Justice

An irregular procedure

The mandate of an assistance and support organization was withdrawn.

A community organization mandated by the Ministère to assist and support netwo6rk users who wish to file a complaint appealed to the Québec Ombudsman when the Minister decided to revoke its mandate.

The organization maintained that the decision, based on a recommendation from the regional board, was made for the wrong reasons and that several irregularities had been noted in the process leading up to the withdrawal of the mandate.

An inquiry showed that the reasons given did not refer in any way to the competence of the organization in carrying out its mandate. Furthermore, the Ministère had indeed not respected the terms of the Act respecting Administrative Justice.

The decision did not meet procedural fairness requirements.

The Act states that the government must advise the person or organization that it is about to render a decision that concerns them and must invite them to provide information or documentation that could be useful in making their decision. In this case, the regional board recommended the withdrawal of a mandate without hearing from the organization's representatives, who found out about it through the newspapers. They thereupon requested a meeting with the Minister to provide explanations regarding the allegations made by the board and to correct certain facts, but in vain.

In light of the situation, the Ombudsman asked the Ministère to review its decision.

The initial decision was changed.

First, the Minister informed the Ombudsman that he maintained his position and would not give the organization back its mandate. However, after a new series of talks, the Ministère retained the services of a third party to review the entire case. In the end, the Minister changed his decision.

More precise criteria and a process revision.

In a more systemic approach, the Ombudsman recommended that the Ministère directly finance assistance and support organizations in order to maintain their autonomy from regional boards, that it set up a continuous process of evaluation of

these organizations and that it establish a training program for people working within these agencies. Finally, the Ombudsman recommended amending the *Guide d'orientation et d'action* to detail the procedure and the conditions for the suspension or withdrawal of a mandate.

The Ombudsman is pursuing its talks with the Ministère regarding follow-ups to the recommendations about all assistance and support organizations.

2.1.6

Le ministère de la Sécurité publique

The mission of the Ministère de la Sécurité publique is to guarantee Quebeckers a safe living environment in which to fully exercise their individual rights and freedoms as well as promote individual and community development. This ambitious mission revolves around three main sectors of activity, namely: ensuring that the laws and regulations that fall within its jurisdiction and which govern social living are respected; providing courts with appropriate clarifications and administering their decisions by promoting the social rehabilitation of offenders in both secure and open custody, in collaboration with the community's resources; and guaranteeing the protection of the population and their living conditions during natural disasters and public welfare emergencies.

Draft Legislation on the Québec Correctional System

In February 2002, after having commented upon the Corbo Report, which inspired the draft legislation, the Québec Ombudsman presented a brief before the Commission des institutions de l'Assemblée nationale on the bill. The proposed reform, in many respects, seeks to bring a greater degree of stringency, transparency and consistency to the correctional system.

The Ombudsman commended the choice of granting the Commission québécoise des libérations conditionnelles (Québec Parole Board) exclusivity in decisions regarding the parole of convicted offenders given prison sentences of six months or more. This major change to the legislature should guarantee consistency when granting temporary absences for the purpose of social rehabilitation, as well as parole.

She made several recommendations to further improve the bill. Some of the main ones can be found below.

One of the major steps in the proposed reform concerns the process of granting reduced sentences. Presently, inmates are paroled after serving two-thirds of their sentence, provided they

respect prison rules and regulations and, where appropriate, the conditions of parole. The draft legislation provides for a new approach, namely a systematic study of all files when granting reduced sentences. The Ombudsman suggested that the evaluation and decision criteria be spelled out in the law and that the mandate to study the merits of the sentence reduction no longer be granted to the disciplinary committee but rather to a new committee, especially dedicated to the task.

The Ombudsman recommended that the right to appeal in matters concerning temporary absences currently provided for under the Act be maintained as is with respect to temporary absences for the purposes of social reintegration, as well as the right to a review for parole without limiting the grounds thereof.

The Ombudsman noted however that the reform could not be properly carried out without sufficient Correctional Services resources. She also insisted upon the need to continue discussions on the recommendations made in the Québec Ombudsman's 1999 Special Report.

Fruitful Exchanges Between the Québec Ombudsman and the Ministère

Follow-up on Correctional Services action plan

In 1999, the Québec Ombudsman published a Special Report on Québec Correctional Services, after which the Ministère developed a plan of action for carrying out the recommendations outlined in the report. The Ombudsman met regularly with Correctional Services to follow up on this plan of action. The meetings also became an opportunity for discussion and debate on systemic problems noted by the Ombudsman.

Evaluation of the system for handling complaints

One of the recommendations in the Special Report was aimed at assessing the system for handling complaints in houses of detention. This was one of the first recommendations to be put into place. A joint committee made up of representatives of the Québec Ombudsman and Correctional Services was created to

evaluate how well the mechanism set up in 1992 was working. In January 2002, after numerous meetings, the committee presented its report, which included some thirty recommendations.

The report concluded that the lack of staff training with respect to prisoners' rights and the procedures for handling complaints was the main shortfall. The committee therefore recommended that measures be taken to train the prison staff. The committee also proposed that the system include two processing levels rather than three, the first being the responsibility of managers closest to the prison operations.

Guidelines

Meanwhile, at the request of Correctional Services, the Québec Ombudsman commented on five proposed guidelines regulating life in prison.

The first concerns discipline. This guideline is extremely important because it affects the fundamental rights of inmates. Sanctions imposed by the disciplinary committee often have a major impact on their residual liberties. That is why it is essential that the disciplinary process strictly respect the principles of natural justice. With that in mind, the Ombudsman recommended several changes, particularly with respect to temporary measures, the right to an attorney and the right to summon and question witnesses.

The second guideline deals with administrative segregation. It details the procedure to follow when the house of detention has reasonable grounds to believe that an inmate is concealing items prohibited by law, such as drugs, inside his or her body. In such cases, the prisoner is held in solitary confinement, in a special cell, for a maximum period of 72 hours. The Ombudsman has suggested a number of changes, including better defining the expression "reasonable grounds".

The Ombudsman also commented on the proposed guideline respecting the classification of inmates. On that topic, she recommended that the principle of separating those awaiting sentencing from other inmates be respected and that intellectually-challenged or mentally-ill prisoners be ensured special protection.

The fourth guideline addresses civil claims for material damages (destruction, loss or theft of personal effects). The Ombudsman recommended that the admission process respecting the inventory of inmates' property be respected.

To the Ombudsman's knowledge, these four guidelines had yet to be adopted by the end of the fiscal year.

Finally, the fifth guideline concerns mail and follows a Superior Court[6] order which prohibited a house of detention from opening mail sent to an inmate by his or her attorney, unless done in their presence. The proposal thus established the procedure to be followed when mail was received for prisoners from their lawyers. The Ombudsman recommended basically that the right to confidentiality apply also to mail sent to an attorney.

The guideline was adopted in December 2001. However, the Québec Ombudsman regretted that Correctional Services had yet to adopt the recommendation. The Ombudsman continues to receive and handle complaints concerning opened mail sent by inmates to their attorneys.

The Ombudsman wishes to see more co-operation in the future and hopes that the Ministère de la Sécurité publique will regularly consult her prior to the adoption of new guidelines and policies. This co-operation could also lead to fewer complaints lodged within houses of detention as well as with the Ombudsman.

Despite these discussions, many issues still remain, as evidenced by the 4,178 requests for intervention received over the past fiscal year. A large number of these requests were for medical care, disciplinary measures or even the attitudes of authorities and staff members.

Medical Care: Inmates Requiring Immediate Care Should be Given Priority

Urgency, not patience, required

G. P. ordered a psychiatric consultation within three days.

On May 14, 2001, two days after a citizen was incarcerated, he was examined by the detention centre's general practitioner, in accordance with the regulations in effect. After examining the

6. *Rose* vs. *Quesnel*, S.C. Québec 2002-05-015290-013, 2001-08-03, J.E. 2001-1575, Judge Édouard Martin.

patient, the doctor recommended that the inmate undergo psychiatric care by May 17th. He prescribed some medication and referred the file to the attending psychiatrist. An appointment was made but continually put off, without the prisoner knowing the reasons why. The latter then decided to use the internal complaints handling system. On June 5, a first-level complaint was submitted. On June 7, not having received a response within the 48-hour time limit, he submitted the same complaint to the second level. The deadline for responding at this level is 72 hours. On June 15, still having received no response, he submitted his complaint to the third level and had to wait until June 18 before he received his response from the second level. He was then told that an appointment with the psychiatrist was scheduled for June 21.

On June 21, he was brought to see the G. P. again and not the psychiatrist. The doctor renewed his prescription and once again recommended that the citizen be examined by a psychiatrist, and before June 27.

On June 22, the nurse informed the G. P. that the inmate was refusing to take his medication and that he was nervous and anxious. That same day, the inmate appealed to the Québec Ombudsman. He confirmed that he had stopped taking his medication, as he thought this would speed up his chances of seeing the psychiatrist.

Lack of specialists.

The Ombudsman immediately approached the detention centre and insisted that the man be seen right away. His name was placed on the list and on July 4, he finally saw the psychiatrist.

No appointment until seven weeks later.

The day of his appointment, the prisoner finally received his reply to his third-level complaint. The Ministère admitted that the complaint was valid with respect to the delayed response time but denies all fault with respect to access to psychiatric care. The Ministère claimed that the man had no cause to insist upon an appointment with the psychiatrist as it was up to the institute's attending physician to make such recommendations.

However, it was the attending physician himself, not the inmate, who, on two occasions, decided that a psychiatric consultation was required. The Ombudsman therefore asked that the Ministère recognize the validity of the request. Following this intervention, a new reply was sent to the man with the desired corrections.

On a more systemic level, the Ombudsman pursued the investigation and discovered that court-ordered psychiatric evaluations are processed first, prior to requests for consultation. This is because when the Court orders a psychiatric evaluation, it also specifies the date the person must reappear before the tribunal with the results of the examination. Thus, to avoid having prisons cited for not respecting a court order and considering the limited number of specialists in detention centres, these cases are treated first, at the expense of those requiring care.

Priorities must be reviewed.

The Ombudsman is aware of the lack of resources but it seems important that any inmate whose state requires immediate care must also be treated as a priority. He has therefore continued to appeal to the Ministère since the issue has yet to be resolved.

Discipline: Rules of Natural Justice Must be Respected

Maintaining discipline is crucial within the prison system. However, as disciplinary sanctions can seriously affect the residual liberty of inmates, it is essential that the disciplinary procedure rigorously respect the law, the rules of natural justice and procedural fairness. The Ombudsman made several recommendations to that effect in his 1999 Special Report. Still, complaints continue to pour in regarding irregular practices or improper use of procedure, abusive sanctions and abuse of power and even legal transgressions. Below are a few examples.

Irregular practices

Allotted period of sixty minutes of fresh air withheld or reduced.

A citizen incarcerated at the Montréal Detention Centre complained that he was being denied his allotted hour per day outside for fresh air and exercise while in solitary confinement. However, this denial was illegal as the Regulation respecting Houses of Detention stipulates that the allotted hour is a guaranteed right even if the inmate is subject to a disciplinary penalty.

Prison changed its practices to conform to Regulations.

Furthermore, an inquiry revealed another irregular practice committed by the institution, namely in taking into account time allotted for telephone calls or showers in calculating the above-mentioned hour out.

The Ombudsman's intervention resulted in the situation being corrected and the detention centre agreeing to modify its practices.

Speaking of disciplinary matters, the Québec Ombudsman has noted that there are more complaints lodged against the Québec City Detention Centre than most other houses of detention. Below are three examples.

Temporary measure applied abusively

Unnecessary confinement.

Six hours after a disciplinary offence, a citizen is sent into confinement as a temporary measure. The measure may be taken when a person has committed an offence and must be controlled due to violent behaviour, for example, before passing before the disciplinary committee. The maximum period allowed for this temporary measure is 24 hours. In this case, there had been no need to control the citizen, as he had remained calm.

Temporary measure applied systematically.

An inquiry revealed that at the Québec City Detention Centre, the temporary measure was applied systematically, for the full 24 hours.

Following the intervention of the Ombudsman, the administration agreed to subtract one day from the citizen's confinement as compensation for the use of the temporary measure. Meanwhile, they also agreed to train their staff on the rules for applying the measure.

Procedure not respected

No time to prepare for hearing.

A prisoner was called before the disciplinary committee and given a report on disciplinary offences for a matter that had occurred two weeks earlier while being held at another detention centre. However, the Regulation respecting Houses of Detention stipulates that a copy of the report on disciplinary offences must be provided prior to the committee hearing. This clause is easily understandable as the rules of natural justice and procedural fairness require that an inmate may be made aware of his alleged offence and properly prepare a defence, if necessary.

Following the Ombudsman's intervention, it was agreed that if a similar situation were to happen again, the disciplinary committee would suspend the hearing for the length of time required by the prisoner involved to prepare.

Solitary confinement: A measure requiring special attention

A record: five months in solitary.

A citizen spent nearly 5 months in solitary confinement, from June to October 2001 inclusively, for various disciplinary offences. He was systematically penalized with solitary confinement, even for minor offences. He appeared to be psychologically disturbed as a result.

Prisoner's mental health was deteriorating and the directive on health care was ignored.

An inquiry revealed that the nursing staff passed daily through the solitary confinement division but only every early in the morning and only stopped to see people awaiting appointments. However, the directive on health care, as well as the *Standard Minimum Rules for the Treatment of Prisoners* adopted by the United Nations and ratified by Canada, require that prisoners in solitary confinement be visited daily by medical personnel.

Penalties were not proportionate to nature of offences.

The Ombudsman therefore requested that the institution ensure that the citizen be systematically seen by the nursing staff so that the state of his health could be checked on a daily basis. Furthermore, he asked that penalties be proportional to the nature of the offences.

The Ombudsman considers it essential that the staff in houses of detention receive proper and continuous training on disciplinary matters and that members of disciplinary committees also receive thorough training on the rules of natural justice and procedural fairness.

Authorities' Attitude: Respect Breeds Respect

While certain complaints handled by the Ombudsman may occasionally appear trivial, it must be remembered that fully appreciating such injuries relies upon the respect of the individual rather than the apparent motives of the allegation.

The primary purpose of correctional services is, without question, the protection of the public. This goal is achieved both through the removal of the offender from society as well as leading the prisoner progressively towards social rehabilitation.

The Ombudsman believes that rehabilitation can only succeed if the inmate is treated with at least a minimum of respect and dignity to allow him or her to become rehabilitated. We must not lose sight of the fact that respect breeds respect.

While it is true that a court conviction results in depriving the offender of civil liberties, the law still grants the prisoner certain "residual" liberties. Prison authorities should therefore require serious grounds to further limit the rights of inmates.

No smoking for seven days

A person incarcerated at the Québec City Detention Centre, already in solitary confinement for one disciplinary offence, received a second penalty for another. The new sanction prohibited him from smoking for seven days when he went outside each day. However, smoking is already forbidden in solitary confinement cells. This meant that he was forced to stop smoking completely for one week.

Sanction not provided for in the Regulation.

The ombudsman let it be known that the disciplinary committee could not deprive the prisoner of the right to smoke outside the institution, as this penalty was not provided for in the Regulation.

Forced to wear beach sandals

Prisoner's shoes confiscated.

An inmate newly admitted to the Valleyfield Detention Centre was forced to give up his thick-soled shoes, which were to be returned to him upon his release. As a replacement, he was given beach sandals (flip-flops).

Upon investigation, the Ombudsman learned that all shoes were systematically examined upon entry, except those with thick soles, which were kept in the locker room. According to the supervisors, the centre did not have the equipment (x-ray machine) needed to do a full search. They therefore would have

to take the shoes apart, at the risk of damaging them. It was therefore simpler and safer to confiscate them and keep them in a locker.

However, while serving a sentence, a prisoner is occasionally called before the court. He must then appear before the judge wearing beach sandals.

Practices were altered.

Despite initial opposition, prison authorities agreed to alter their practices. From now on, unless there are reasonable grounds to suspect that someone is hiding illegal substances in their shoes, he can keep them. However, if the institution is unable to examine them and decides to confiscate them, the inmate must be provided with real shoes.

2.1.7

Le ministère des Transports

The mission of the Ministère des Transports du Québec is to ensure the mobility of people and goods throughout the province via an efficient and safe transportation system that contributes to the economic and social development of Québec.

Bill 17: Photo Radar

On June 7, 2001, the Québec Ombudsman submitted her comments to the Minister of Transport with respect to the bill allowing the use of the photo radar, which amends the Highway Safety Code and the Code of Penal Procedure.

The relevant terms of the bill state that the owner of a vehicle, not the driver, would now be held personally responsible for a speeding violation when caught by photo radar.

The Québec Ombudsman believes that this transfer of responsibility has serious consequences for the owner, including the often high cost of the ticket, seeking out and identifying the driver at fault and requesting reimbursement for the payment of the fine. She noted that no legal recourse is provided for recovering this expense.

Meanwhile, the bill also states that no demerit points will be registered on the records of drivers caught for speeding by photo radar. However, for many drivers, the threat of demerit points is the only incentive to obey speed limits. The provision also violates the principle of equal treatment of all citizens, as for the same offence, some drivers will lose points while others will not, depending on the method by which they were caught speeding.

Furthermore, the bill stipulates that no jail sentence is to be imposed in the case of unpaid fines under the new system. However, the fine collector may in that case ask the Société de l'assurance automobile to suspend a driver's licence, when the violator was caught on photo radar. This could lead to the suspension of a vehicle owner's licence following an offence by a third party who refuses to pay the ticket.

On the whole, the Ombudsman feels that this bill offers the government an easy solution at the expense of the rights of vehicle owners. She therefore recommended that the Minister of Transport outline other means to reach his desired goal.

As of March 31, 2002, the bill had not yet been adopted.

Failure to Act Also Abuse of Rights

Is anyone there?

A citizen owns a plot of land with a small lake. The lake is situated at the foot of a mountain with steep and rocky cliffs. A stream cascades down the mountain and fills the lake.

The Ministère carried out roadwork.

Twelve years ago, the Ministère des Transports extended the highway adjacent to the citizen's land. While the work was being carried out, the workers built a retention pond alongside the stream to catch the sediment that might arise from the roadwork and prevent it from falling into the lake.

The citizen's lake filled up with sediment.

Once the work was completed, the pond was left in place. Over time, it filled up and overflowed. The surplus sediment began to creep into the citizen's lake. The latter then applied to the Ministère to take appropriate measures to correct the situation.

After several attempts spread out over two years, the situation had continued to deteriorate, as the Ministère did nothing. As a last resort, the citizen appealed to the Ombudsman.

It took the Ministère two years to fix the problem.

The Ombudsman contacted the Ministère immediately and within 48 hours the work had begun. Three days later it was done: the retention pond was removed and the banks of the stream restored.

dignity
justice
respect
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2.2
Agencies

2.2.1

La Commission administrative des régimes de retraite et d'assurances

The Commission administrative des régimes de retraite et d'assurances administers public and parapublic sector employee pension plans. Its clientele includes employers, active and non-active subscribers and pensioners. Approximately 165,000 pensioners are retired pension recipients.

Over the last few years, the Commission has been faced with a variety of problems that led to dissatisfaction among its clientele. These included: difficulties with telephone access, lengthy processing times and pension payment errors. Nonetheless, the Québec Ombudsman feels that the agency is working to improve its services and is open to suggestions. The Commission actively co-operates with the Ombudsman in seeking solutions that aim to improve relations with pension beneficiaries and subscribers.

Information is Often Inaccurate, Erroneous, Incomplete and Late

An unpleasant surprise

A substantial but legal drop in her income.

At the beginning of 2001, a citizen appealed to the Québec Ombudsman to complain that her teacher's pension was reduced significantly in January and that, at the same time, her surviving spouse's pension, paid by another agency, was also cut. The woman was distressed by this substantial and unexpected drop in her income, which left her in an uncomfortable financial position.

An inquiry revealed that these reductions were made in accordance with the legislative terms governing the two pension plans in question. The Commission's reduction stemmed from the combination of the Teachers' Pension Plan and the Québec Pension Plan, which occur at age 65.

She only has three days to adjust.

While the Commission had advised the citizen of the forthcoming reduction, she was left with very little time in which to adjust her budget, the notice having been sent on January 5 and received on January 12, three days before the payment date.

Normally, when a person retires, the Commission sends written confirmation of the amount they are to receive, with a mention that at the age of 65, payments will be reduced because of the additional onset of the Québec Pension Plan. A reminder is then sent at the beginning of the first month of the reduction.

In this lady's case, the original letter had been sent ten years before, as she had retired at age 55. The information was therefore not fresh in her mind by the time she turned 65.

A reminder is now sent three months.

The Ombudsman requested that the Commission look into the possibility of giving more advance notice of the reduction that is to apply at age 65, and suggested 3 months as a reasonable time frame. The Commission considered the matter, adopted the recommendation and set up a procedure for sending information letters to that effect. Over 520 notices are now issued every month, since the implementation of the new measure. The change began to take effect in November 2001.

2.2.2

La Commission de la santé et de la sécurité du travail

The CSST administers the Québec Occupational Health and Safety Plan. It is responsible for compensating and rehabilitating workers who have been victims of an occupational injury or disease. The Commission also administers the Crime Victims Compensation Plan. It is also responsible for occupational health and safety prevention and inspections, and for compensating pregnant or breast-feeding workers who have been granted protective reassignment.

Furthermore, the Commission oversees the application of various laws, such as the Government Employees Compensation Act, the Act to Promote Good Citizenship and the Act respecting Indemnities for Victims of Asbestos and Silicosis on Mines and Quarries.

Crime victims compensation

At the end of the 2001-2002 fiscal year, the Québec Ombudsman released a special report on crime victims compensation and the impact of crime as assumed by the State, entitled *Le contrecoup du crime à assumer par l'État* (in French only).

While there must be an ongoing effort to reduce crime in society, it is unrealistic to suggest that it will ever be completely eliminated. It is important that every effort be made to successfully reintegrate offenders into the community, but it is equally important that their victims receive support. Society must provide victims of crime and their families the assistance they need to return to normal life.

The Québec Ombudsman has noted that crime victims are not compensated in the same way as other categories of victims. She therefore calls for this situation to be quickly remedied in the spirit of equity.

The Crime Victims Compensation Act, passed in 1971, was based on the parameters of the 1931 worker's compensation plan. The Workmen's Compensation Act was overhauled in

1985, but the changes only affected workers, not crime victims. The legislature passed a new law in 1993, but it was never enacted. And so, in 2002, victims of crime are compensated according to the same principles originally set out in 1931 for workplace accidents.

The Québec Ombudsman believes that, in order to promote social equality, victim compensation programs should all provide similar support regardless of the source of funding or the type of incident that caused the physical or psychological injury. There is no justification for compensating an injury differently depending on whether it was sustained due to a crime or a traffic accident.

The Ombudsman wished to draw attention to the main problems surrounding victim compensation. In order to align the plan with its counterparts, she recommended that the crime victims compensation plan be thoroughly revised in the same spirit of justice and fairness that guided reforms to the programs compensating victims of traffic and workplace accidents.

The Québec Ombudsman has therefore recommended the following revisions to the Crime Victims Compensation Act, which would bring it in line with the program covering victims of traffic accidents:

- Distinct compensation for bodily injury and loss of income;
- Compensation for physical injury in the form of a lump sum payment, irrespective of the victim's income prior to injury;
- Compensation for victims of crime who are unemployed at the time of the incident according to the same principles governing the treatment of unemployed traffic accident victims;
- Compensation for young victims of crime according to the same criteria and amounts set out in the Automobile Insurance Act;
- Updated bereavement allowances and funeral expenses, similar to the amounts established in the Automobile Insurance Act;
- A broader definition of "victim" that includes the victim's family;
- Revisions to the list of infractions set out in the Appendix of the Crime Victims Compensation Act, in order to reflect the current face of crime; and
- Provisions for victims who are unsatisfied to take their case to the Québec Administrative Tribunal.

Workers' Compensation

Québec Ombudsman investigations over the past year have brought to light a number of inconsistencies between certain CSST decisions and the decisions rendered by the Commission des lésions professionnelles (CLP). Moreover, discrepancies have also emerged within the CSST, between regional and provincial offices as well as between regions.

Consistent Decision-making

CSST policy does not match decisions

The CSST refused to reimburse the cost of a worker's glasses, which had fallen to the ground and been crushed by a trolley. He therefore appealed to the Québec Ombudsman.

CSST refuses to reimburse the cost of glasses.

The Act respecting Industrial Accidents and Occupational Diseases provides for payment of an "indemnity for the repair or replacement of a prosthesis or orthesis (...) unintentionally damaged during an unforeseen and sudden occurrence attributable to any cause, arising out of his work (...)".

An inquiry revealed that the worker had been visiting a client, that he had been piling boxes onto a trolley, that his glasses had slipped off because he was perspiring, that they fell on the ground and that the trolley rolled over them.

The officer responsible for the case explained that CSST policy only reimbursed the cost of glasses if the worker himself had been the subject of an unforeseen and sudden occurrence. In this case, the worker was not the victim of any particular occurrence that could have caused his glasses to fall and be destroyed.

According to the CSST, the worker himself must be the victim of an unforeseen occurrence.

The Ombudsman then forwarded several recent CLP decisions upholding a larger interpretation than the law provided. One of them reads as follows:

"The Commission des lésions professionnelles considers that Article 113 of An Act respecting Industrial Accidents and Occupational Diseases does not require that the worker himself be involved in the unforeseen and sudden occurrence. It is enough that the prosthesis be unintentionally damaged during an unforeseen and sudden occurrence attributable to any cause and arising out of his work."

Court's decision less stringent: it is enough that the prosthesis was damaged during an unforeseen and sudden occurrence arousing at work.

After having consulted his superiors, the officer informed the Ombudsman that the CSST was well aware of the position of the Commission des lésions professionnelles but did not plan to follow suit.

The Québec Ombudsman considered this position to be completely unreasonable as it forced workers to go through long and costly trials before the courts. He therefore recommended that the CSST modify its policy as soon as possible to bring it into line with the interpretation held by the Commission des lésions professionnelles, which is the highest court of appeal in this matter.

CSST finally agreed to adopt court decision.

Pursuant to the Ombudsman's intervention, the CSST changed its policy regarding the eligibility criteria for prostheses and ortheses damaged in the workplace. It is now in line with CLP policy.

Refusal to uphold court decision

According to the CSST, the worker did not have an occupational pulmonary disease.

On July 25, 1996, a worker claimed damages for lung disease. A committee of pneumologists, which examined him the following October, concluded that the worker did not have an occupational pulmonary disease. The CSST rendered its decision in January 1997 and denied the worker's claim.

The court of appeals reversed the CSST's decision.

The CSST review board confirmed the refusal. The worker then appealed to the CLP. In an October 1999 decision, the CLP reversed the CSST's decision, declaring that the worker had asbestosis, which was an occupational pulmonary disease, and therefore had the right to compensation. The file was therefore returned to the CSST to follow through on the final decision.

The file was returned to CSST, which maintained its position.

The same scenario was repeated. The committee examined the worker again and maintained that he did not have an occupational pulmonary disease, contrary to the CLP ruling, and therefore refused to award compensation. The worker then turned to the Québec Ombudsman.

The court decision was finally upheld.

The Ombudsman suggested that the CSST return the case to the pneumologists, emphasising the legal ramifications of a higher court decision. The committee finally acknowledged that the worker did have a permanent injury and the CSST paid compensation accordingly.

Regional office refuses to apply provincial guideline

On October 31, 2000, a worker was acknowledged as having an occupational pulmonary disease. The resulting anatomical and physiological deficiency entitled him to a lump sum payment of $63,161. The CSST ruled that the sum would be paid out once the 45-day appeal period had expired, as compensation for bodily injury is payable only after a decision has been finalized.

In accordance with the law, the CSST was waiting for the appeal period to expire before paying compensation.

During the waiting period, however, the worker unfortunately succumbed to his illness. Since the worker was not married and had no dependent children, the regional office of the CSST refused to pay the agreed-upon compensation to the man's estate. His heirs therefore requested a review of the case and submitted the issue to the Ombudsman.

In the meantime, the worker died.

The Québec Ombudsman had already intervened with the CSST once before on this topic, in 1995. At that time, a provincial guideline was issued by the CSST, indicating the policies to be followed by regional offices in exceptional cases such as this one. This guideline, which is still in effect, specifies that:

"Indemnities for bodily injury are payable under the following circumstances:

1) When the evaluation is performed by a doctor, but the worker dies before the decision is handed down or before it is final;

(...)".

This guideline clearly covers the situation in question. The Ombudsman therefore reminded the regional office of its existence. However, against all expectations, the civil servant upheld the original refusal. The Ombudsman then applied to the reviewer responsible for the case when the heirs first contested the decision. The reviewer sided with the Ombudsman's arguments, reversed the decision of the regional office and applied the provincial guideline. The man's heirs thus received the amount initially due them, plus interest.

CSST refused to apply provincial guideline.

Review ruled in favour of heirs.

Regional Discrepancies

On-the-job training

In 1998, the legislature ruled that participants in job readiness programs are covered by the plan.

The Act respecting Industrial Accidents and Occupational Diseases considers citizens who participate in job readiness programs offered by the Ministère de l'Emploi et de la Solidarité sociale to be workers and thus eligible for the compensation plan.

When the law was modified in 1998, the legislature clearly stipulated that on-the-job training programs should be covered.

The new terms were not applied by all regional offices.

However, the Québec Ombudsman noticed that certain regional offices were not taking into account the new terms of the law. The Ombudsman therefore pointed out to the CSST that the new wording of the law included all job-training measures and that the interpretation used by officers should be standardized.

The CSST agreed and issued a province-wide memo to clarify the situation.

Back to school

Under certain conditions, students are entitled to income replacement indemnity, even after returning to school.

The Act respecting Industrial Accidents and Occupational Diseases stipulates that a student is entitled to an income replacement indemnity "if he becomes unable, by reason of his injury, to carry on the remunerated employment that he holds or would have held, pursue his studies or carry on an employment connected with the completion of his studies".

The interpretation of the law varies from one region to the next.

In the course of its investigations, the Ombudsman noted that certain regional offices used this clause to terminate income replacement compensation as soon as the student returned to school, even if he was still unable to carry on employment connected with his studies.

For some regional offices, going back to school spells the end of compensation.

The Ombudsman feels that this interpretation is unreasonable, especially as the clause lists several situations, each of which entitles the student to the indemnity after going back to school. Furthermore, ongoing parliamentary debate on this clause shows the legislature leaning toward expanding the general eligibility requirements for students.

Numerous appeals have succeeded in convincing the CSST to issue a provincial guideline on the matter. From now on, it will take into account the inability of students to carry on employment while studying and will maintain their indemnity despite their return to school.

CSST issued a provincial guideline on the extent of the law.

Advances

The law stipulates that medicines and travel expenses related to occupational injuries are refundable. However, the law does not explicitly provide for advances to workers for travelling or purchasing medication.

Still, under certain conditions, in order not to delay the treatment process, the CSST will agree to advance payments to defray costs that some workers cannot bear themselves. On occasion, it will pay the supplier directly for products or services rendered. This unwritten practice, based on fairness and common sense, is evaluated on a case-by-case basis.

In order to avoid compromising medical treatment of disadvantaged workers, it is possible to receive an advance.

The Québec Ombudsman however, has noted that certain regional offices systematically refuse any and all such arrangements for workers. The latter may thus find themselves in distress as the indemnity payments may be cut if they do not show up for their appointments because they couldn't afford to get there. Meanwhile, if they cannot pay for their medicine, their recovery is compromised.

The measure is not accessible to all.

The Ombudsman therefore intervened in an attempt to avoid interrupting the treatment of a worker who did not have the means to pay for her medication or her travel expenses. In this case, the CSST agreed to pay the suppliers directly.

Adapting Standards to Specific Situations

Transportation fees refunded

The law provides that when a victim of a workplace injury needs to travel to undergo a medical examination or take part in a rehabilitation program, his expenses may be reimbursed.

The Law stipulates that public transport must be favoured.

Public transport is not always available.

The law also stipulates that public transport must be favoured over other means of transportation. However, public transportation is not always available.

In such cases, taxi or driving expenses will be reimbursed with an appropriate amount, but only with a doctor's statement certifying that the worker is medically incapable of using public transportation.

One's medical condition should not be a criterion.

Considering that the medical condition of a worker is not an evaluation criterion when public transport is inaccessible, the Ombudsman suggested that the CSST revise its rule.

CSST expanded its interpretation.

Following this intervention, the CSST agreed to expand its interpretation. The terms can now be found in its guide on living and travel expenses (*Guide sur les frais de séjour et de déplacement*) while awaiting the changes to the legislation.

Moving causes hassles

A pregnant woman was forced to stop working.

A pregnant worker was advised by her doctor to restrict her activities. Since her employer could not offer her a temporary reassignment that would allow her to perform tasks carrying no risk for her pregnancy, she completely stopped working and was compensated as the law provides.

Her indemnity payments were cut when she joined her husband.

As her husband was interning in another city, she decided to go join him, to save the cost of two rents. She advised her employer and forwarded her new address and telephone number so that she could be reached at any time. Believing that the move made her unavailable for work, the CSST cut her indemnity payments.

Compensation was restored.

The woman then appealed to the Ombudsman, who noted that the woman was still available for a temporary reassignment and that she had taken the necessary measures to remain in contact with her employer. Under the circumstances, there was no reason to suspend her compensation.

Pursuant to this request, the payments were reinstated.

Information Confidentiality

Transfer of medical reports

Notices forwarded to the employer's health services department.

The Act respecting Industrial Accidents and Occupational Diseases provides for a medical examination in case of disparities between the conclusions of the CSST-designated health professional and those of the worker's own doctor. In such cases, the CSST submits a report to the Bureau d'évaluation médicale, which renders a medical decision. This decision is then forwarded to each party. The law stipulates that the doctor appointed by the employer is to receive the latter's copy of the notice.

Not all employers have health services departments.

Upon receiving a complaint, the Ombudsman contacted the Commission d'accès à l'information to inform them that the Bureau d'évaluation médicale policy was to forward its notices to employers' health services departments. However, while some employers have a health services department, they do not necessarily have an attending physician. Furthermore, not all employers have a health services department. So, how can the Bureau d'évaluation médicale ensure that the information contained in the medical report remains confidential?

The Québec Ombudsman pointed out that this procedure risks infringing on citizens' right to privacy and dignity.

Confidentiality is a high-priority concern.

Pursuant to this intervention, the Bureau d'évaluation médicale agreed to train its staff on the application of the Act respecting Access to Documents. Its doctors will therefore be more aware of the consequences of divulging information to unauthorised persons. Moreover, the Ombudsman will be invited to attend in order to ensure that the course follows the spirit of its recommendations.

2.2.3

La Commission des lésions professionnelles

The Commission des lésions professionnelles (CLP) is a court of appeals where workers and employers may contest decisions rendered by the Commission de la santé et de la sécurité du travail (CSST). The tribunal was created on April 1, 1998 by the adoption of the Act to establish the Commission des lésions professionnelles and amending various legislative provisions, to replace the Commission d'appel en matière de lésions professionnelles.

Conflicting Trends in Jurisprudence

Admittedly, conflicting trends in jurisprudence within an administrative court may be confusing to the clientele of said tribunal, and could lead to numerous lawsuits, as court decisions may differ between two nearly identical cases, depending on whether the commissioner hearing each case follows one school of thought or another.

Section 418 of the Act respecting Industrial accidents and occupational diseases aims to achieve consistency within the CLP, stipulating that the duties of its president include:

> *"(1) fostering the participation of commissioners in the formulation of guiding principles for the board so as to maintain a high level of quality and coherence of decisions;*
>
> *(...)".*

Already in 1992, in the *Tremblay*[7] ruling, Judge Gonthier stated, referring to the Commission des affaires sociales, that this "objective of consistency responds to litigants' need for stability but also to the dictates of justice. As the Commission's decisions are not subject to appeal, it is the Commission itself which has the duty of preventing inconsistent decision-making."

In the wake of the replacement of the CALP by the CLP and the adoption of the new clause aimed at ensuring a high level of quality and consistency in decisions, clearly inspired by the

7. *Tremblay* vs. *Québec (Commission des affaires sociales)*, [1992] 1 S.C.R. 952.

rulings of the Supreme Court, a quality control committee was established at the CLP to follow commissioners' debates, analyse the changes in the situation and advise the president on the matter.

However, nearly four years after the creation of the CLP, the Québec Ombudsman has noted that there still remain conflicting trends in jurisprudence on certain issues. For example, the effects of CSST decisions, following reports from the Bureau d'évaluation médicale (BEM), remain a particularly controversial issue among commissioners.

According to the law, the CSST is bound by the opinions of the BEM and must render its decisions accordingly. However, does this mean that some initial decisions that went uncontested and were then finalized must subsequently be annulled? Some commissioners believe that such decisions should in fact apply retroactively, which may potentially put in question the eligibility of an injury and thus the right to an income replacement indemnity. Others feel that common sense suggests merely that BEM conclusions apply as of the new decision and that it would be unreasonable to overrule the stability of prior decisions. In their opinion, a worker should not be at the mercy of a medical examination process and should be able to trust the conclusions of his own physician and the decisions rendered right from the start, without fearing that the situation may change a few months - or even years - later.

In the course of an investigation on the matter, the Ombudsman has intervened with the CLP to express its concern regarding two conflicting trends in existing precedents and the resulting unfortunate consequences. The CLP assured the Ombudsman that the quality control committee would pay particular attention to it.

The Ombudsman intends to follow the situation closely over the coming year, as much with regard to this particular issue as to the means and directions that the CLP will take to succeed in "maintain(ing) a high level of quality and coherence of decisions", as indicated by the legislature.

2.2.4

Le Curateur public

The Public Curator is responsible for protecting the rights of incapacitated persons entrusted to them by the courts, thus ensuring and protecting their moral and physical well-being, administering their estate and helping them to exercise their civil rights. The Curator also supervises the administration of private tutors and curators. Finally, the Public Curator's mission also includes the provisional administration of unclaimed property on behalf of the State.

Draft Legislation Amending the Regulation Respecting the Application of the Public Curator Act

On December 18, 2001, following publication of the draft legislation amending the Regulation respecting the application of the Public Curator Act, the Québec Ombudsman presented a report to the Public Curator with a number of comments and suggestions.

The draft legislation mainly deals with changes made to the form filled out by private tutors and curators for their annual administration report to the Public Curator.

The Ombudsman intervened first and foremost to ensure that private representatives would be able to provide the Public Curator with all the relevant information so that the latter could best carry out its supervisory duties.

However, while private tutors and curators have a two-part mandate, namely in the protection of the individual and that of his or her property, the changes made to the form focus solely on the administration of the property of the incapacitated persons.

Aware of the major role of private representatives in the protection of incapacitated persons, the Public Curator plans to outline a set of rules regulating the matter shortly. Legislative and statutory amendments could soon be proposed, setting out the obligations of private tutors and curators, as well as the manner in which the Public Curator's supervisory duties are to

be carried out. The Québec Ombudsman will keep a close eye on the situation and its progression. The following example clearly illustrates the need for such rules.

Best interest of incapacitated person not always clear

One option was a permanent placement.

A private tutor represented his mother, who lived at home but whose physical health was deteriorating. One possible option was a permanent placement in a care facility. The tutor therefore agreed to a temporary placement in order to allow health and social services professionals to evaluate the situation.

Shortly after the woman was admitted to the centre, it became clear to the professionals that a permanent placement was required.

The private tutor was advised of the conclusion, but was not sent an evaluation report of his mother's condition.

Tutor refused to place his mother right then.

The centre insisted that he immediately sign a consent form for the permanent placement. The centre told him that a home had been found and that his mother had to move the next day. However, the tutor was not able to get an assurance that a permanent placement was the best solution, was not able to visit the centre where his mother was to be transferred, and, most importantly, had not been able to prepare her for the transfer. She, meanwhile, wanted to return to her home and did not wish to be placed.

The tutor therefore refused to sign the consent form right then.

Curator wanted to force placement, against the wishes of the tutor.

The Public Curator decided that the tutor was not acting in the best interest of his mother and tried to force him to give consent. If he refused, the Curator threatened to go to court to have him replaced as tutor, and to place his mother under public protective supervision. The Curator added that he would also ask the court to have all fees and expenses related to the request paid entirely by the current tutor.

The Québec Ombudsman pointed out that a tutor could not be dismissed simply because he did not share the same opinion as the Public Curator. The dismissal was therefore not requested.

With respect to the protection of the property of incapacitated persons, the Ombudsman asked the Public Curator to closely monitor the security bonds, or guarantees, that private representatives must obtain when administering large estates. The Ombudsman intends to continue discussions with the Public Curator on the matter.

Rapid and Necessary Response to Reports: Follow-up on Recommendations

In the course of various inquiries, the Québec Ombudsman has often noticed that the Public Curator's office did not always thoroughly investigate problem situations that were brought to its attention. For example, when informed that health and social services institutions were not offering the people it represented the care and services that their conditions required, the Curator tended to rely on the information provided by the institution supervisors, without making rigorous inquiries of its own.

In his November 1997 Special Report, entitled *The Public Curator and the Rights of the Incapacitated*, the Ombudsman recommended that the Public Curator himself verify the facts leading up to a complaint and, as needed, exercise its powers as a commissioner of inquiries.

As the Public Curator did not previously possess the means to act on its own, the legislature amended the Civil Code in June 1999, now granting the Curator the legal capacity required to address the court and ask that provisional measures be taken to protect the rights of isolated and distressed persons, even before a protection plan has been opened.

More recently, in September 2001, the Public Curator outlined its newly adopted procedure for conducting inquiries in its document on the policies respecting the processing of reports to the Public Curator, entitled *Le traitement des signalements au Curateur public du Québec – Les orientations*.

As a result, since October 1, 2001, reports are now verified within 48 hours of receipt.

Furthermore, as recommended by the Québec Ombudsman, the new policy provides for the use of the powers of a commissioner of inquiries, if required.

Positive outcome of new procedure

Investigation led to replacement of the mandatary and reimbursement of funds used for personal gain.

Concerned with the way in which a mandatary was carrying out his duties as estate administrator for an incapacitated person, a citizen appealed to the Québec Ombudsman. Upon request, the Public Curator investigated, gathering enough evidence to submit a request to the courts for a replacement. The request was granted and measures were subsequently taken to obtain a reimbursement of funds taken by the mandatary for personal use.

Adjustments still required

Suicide threats: a situation that requires rapid intervention.

The Ombudsman noticed that the intervention procedure outlined by the Public Curator should be adapted for incapacitated persons who threaten to commit suicide.

Such threats often occur in crisis situations where rapid intervention by competent professionals is required. The Public Curator promised the Ombudsman that it would adapt its current procedure to such situations.

Too Much or Too Little Information

Unfortunate consequences of reading own file

After consulting her file, a citizen cut all ties with her father.

At the request of a citizen represented by the Public Curator, the latter forwarded her file so she could consult it. She thereupon discovered that her father had revealed personal facts about her. Feeling betrayed, she cut off all ties with her father, who had only wanted to help his daughter by informing to help the Public Curator of the difficulties she had experienced in her life.

Due to the very special nature of the Public Curator's mission, it is often necessary to know intimate details about the people it represents. Relatives often reveal very confidential information in order to help the Curator define their needs and limitations.

The Curator reviewed its confidentiality policy.

The Ombudsman pointed out that the Curator did not always take the necessary precautions in such matters to protect confidential information transmitted to them by third parties.

Following the intervention, the Public Curator reviewed its guidelines relating to access to and the protection of the information it holds. From now on, personal information revealed by third parties, as well as personal information on third parties themselves, shall remain confidential.

Long wait for explanation

An incapacitated person was living alone in an apartment. The Public Curator administered his property, paid his expenses and made investments for him. The citizen asked for an explanation of his income and expenses.

He appealed to the Québec Ombudsman because the Curator refused to answer his questions following an examination of his asset summary.

An inquiry revealed that the Curator had delegated the responsibility of answering the man's questions to the social worker who took care of his daily needs.

The Curator delegated the responsibility of answering to the social worker.

Believing that the responsibility of informing the people represented by the Public Curator of their assets and liabilities should fall to the latter, the Ombudsman asked the Curator to meet with the man at his home. The Public Curator agreed to go, but in January 2002, the citizen informed the Ombudsman that he had never come. The home visit finally took place on February 7, 2002, three months after the initial promise.

It took three months for the Curator to finally meet with the man.

The Curator acknowledged that he needed to meet with his clientele, especially those who live alone.

Lack of Resources Causes Serious Delays

Abandoned building

A year before the case was brought to the attention of the Québec Ombudsman, the Public Curator was supposed to sell a building belonging to an incapacitated person. The relatives of this person had vainly directed a number of potential buyers to the Curator, who had not looked at the offers. As the building

The Public Curator took a long time to sell a building.

was uninhabited but not boarded up, the relatives were afraid that it could be vandalized or could deteriorate. Its market value would then be negatively affected.

The real estate department was not fully staffed.

Following the intervention of the Ombudsman, the Curator began sale procedures. The reduced staff in the real estate department was given as an excuse for the delays.

The situation is improving.

The Public Curator pla[illegible] to hire more staff for this department and provide them with the necessary training and claims they will able to act [illegible]ore quickly in the future.

2.2.5

La Régie de l'assurance maladie du Québec

The Régie de l'assurance maladie du Québec administers the Health Insurance and Prescription Drug Insurance Plans, as well as some 40 health and social services programs, including medical care and optometry services plus dental care services for children and employment assistance recipients.

Draft Bill on the Québec Health Card

On March 14, 2002, the Québec Ombudsman presented the Commission des affaires sociales with her comments on the new health card, also known as the "smart card", within the context of a general consultation on the draft bill entitled the Québec Health Card Act. She stressed the importance of evaluating the full impact of such a project and the danger of implementing it too hastily, which could lead to situations where their stated goals, namely ensuring the quality and continuity of health services and social services, could be compromised. With respect to the right to privacy and the protection of personal information, the Ombudsman recommended that precisions be made within the text to guarantee that the proposed new technologies only serve the purposes for which they were designed.

The Ombudsman also asked that the notion of role conflict be introduced. Access to medical information profiles are expected to be defined by law. However, it is possible that a health care worker may have several access profiles if he or she performs a number of different professional functions within the same establishment, or within more than one establishment. Therefore, measures aimed at protecting confidentiality may be ineffective unless means are established to ensure that the provisions of the law are applied and supported. This is why the Ombudsman suggested that the notion of role conflict become subject to a declaration and a hospital administrator would be responsible for limiting and verifying its usage.

Finally, the Ombudsman recalled that the field of health and social services closely affects the private life of all Québec citizens and reiterated that the technology proposed is highly

complex and its effects are unpredictable. She therefore requested that the government be cautious, be open to the comments of everyone involved, from all communities and fields, and inform the public of the goals of the project and the changes it will entail.

Precise and Accurate Information is Essential

Vague information leads to error

A woman complained to the Québec Ombudsman about the refusal of the Régie to reimburse her for the cost of an eye exam.

Is the cost of an eye exam refundable for people aged 60-64?

She explained that she had read in a senior citizens' magazine that eye exams were free for people aged 60 to 64. She contacted the Régie, who confirmed the information and sent her a refund application form. The woman filled out the form and shortly thereafter received a negative response.

Subject to certain conditions.

The Ombudsman looked at the magazine and determined that in fact the wording was confusing. As it was a public service announcement, the Ombudsman then consulted the Régie's Internet site and discovered the same imprecise information:

> *"In order to benefit from free optometric services, which consists of one regular or more specialized examination per year, you must be over 65. If you are between the ages of 60 and 64 and you receive a spouse's allowance under the Old Age Security Act, you are also eligible, as well as if you are accommodated in a health-care facility...".*

Information should be accessible and understandable.

In order to understand the true meaning of the information being transmitted, one would have to consult the Health Insurance Act, the regulation respecting its application and several documents from the Ministère de l'Emploi et de la Solidarité sociale. The Ombudsman believes that the information circulated by government agencies should be easily accessible and understandable.

Pursuant to this intervention, the Régie modified the text. From now on, its advertisements clearly indicate that "persons 60 to 64 years of age who have received a spouse's allowance under

the Old Age Security Act for at least 12 consecutive months and who, without this allowance, would be entitled to employment assistance" may benefit from free optometric services.

The citizen realized that the Régie's refusal was justified since she did not meet the requirements described. However, she said she was satisfied with the explanation and glad to have been able to help others.

Waiting period did not apply

The law imposes a three-month waiting period before a person who wishes to settle in Québec may benefit from the plan.

To be eligible for health services covered by the Régie, you must have a health insurance card. However, as of May 31, 2001, pursuant to amendments made to the Regulation respecting the eligibility and registration of insured persons, any person who wishes to settle in Québec (Canadian citizens or foreign nationals) must wait three months before receiving a health insurance card, except under certain circumstances. Someone who required services during this waiting period would therefore have to assume the costs directly or take out temporary private health insurance. The person would become eligible for health insurance coverage as of the 1st day of the fourth month following his or her registration with the Régie.

In October 2001, a young woman who was born in Québec appealed to the Ombudsman because she had been waiting a long time for the Régie to deliver her health insurance card. An inquiry revealed that at the end of June 2000, the woman had left to study in the United States for 15 months. In July 2000, the Régie asked her to return her health insurance card, as it believed she had moved permanently to the United States. Upon her return to Québec in September 2001, 5 months pregnant, she applied to the Régie to be reinstated to the health insurance plan. The latter then imposed a waiting period and authorized her registration starting on December 1, 2001.

There are exceptions.

The woman stated to the Ombudsman that she had read in a circular from the Ministère de la Santé et des Services sociaux dated June 1, 2001, that some people could have access to health services during the waiting period preceding the receipt of the health insurance card. When she contacted the Régie, she was told that that was only for immigrants.

The information circulated was erroneous.

Upon further verification, the Ombudsman concluded that the document from the Ministère did not only apply to immigrants. In fact, female victims of rape, pregnant women and people with infectious diseases that could become public health hazards are allowed to receive the necessary medical and pharmaceutical services, even if they do not have health insurance cards. It goes without saying that these people must first meet the eligibility requirements for the plan. In this case, the pregnant citizen was eligible and there was no reason for the wait. Upon the request of the Ombudsman, the Régie agreed to insure her, which allowed her to receive maternity health care services.

Application of Standards: Procedure Rules

Request unnecessary

A woman appealed to the Québec Ombudsman because the Régie refused to correct the error in her daughter's family name on her health insurance card.

The girl's family name was misspelled.

The mother explained that she had given birth to a girl in July 2001 and she had immediately filled in the declaration of birth to register her with the Registrar of Civil Status. The following October, she received confirmation that her daughter was registered with the Registrar of Civil Status, but noted an error in the spelling of the family name. She immediately requested a correction. In the meantime, she received her daughter's health insurance card, which carried the same error since the Régie based its card registration on data from the Registrar.

The corrected document from the Registrar of Civil Status did not suffice.

She sent the Régie the corrected declaration of birth from the Registrar of Civil Status. According to the regulations in effect, the Régie has the right to require a birth certificate to make any changes to the family name, and did so. However, the Ombudsman felt that the woman should not have to pay for a birth certificate since she was not the one responsible for committing the administrative error. The document from the Registrar should suffice. The Régie agreed and issued the card with the family name corrected.

2.2.6

La Régie des marchés agricoles et alimentaires du Québec

The RMAAQ promotes the efficient and orderly marketing of food, agricultural, fishery and forest products by preventing and resolving problems that arise from producing and marketing these products, while taking into account and protecting consumer and public interests.

Transparency: An Important Value

A hasty conclusion

Régie not exercising supervisory powers.

In February 1997, a group of sheep and lamb producers appealed to the Québec Ombudsman. Not satisfied with the financial statements issued by their marketing board, they wished to denounce the Régie for its inaction in not exercising its supervisory power over the board.

The Act respecting the Marketing of agricultural, food and fish products defines the role of a marketing board as follows: it acts as agent for producers in negotiations with marketing intermediaries. In carrying out this role, it regulates and administers the marketing of the product in question, in accordance with the mandate previously defined by the producers in their joint plan.

This administrative function is often granted to a federation of agricultural unions or associations. The law therefore stipulates that the board has the obligation to maintain two separate accounting systems: one for its union activities and another for the administration of its joint plan.

In 1997, therefore, following a series of meetings between the Québec Ombudsman, the Régie and the sheep producers, it was agreed that the latter should address the issue of the board's irregular financial statements – in this case prepared by the Fédération des producteurs d'agneaux et de moutons du Québec – at the public hearing for the sector's five-year joint plan evaluation.

Financial statements unclear.

The hearing was held in February 1998, chaired by the Régie. At the hearing, the producers raised the issue of the lack of transparency within the board, alleging that the financial statements did not allow them to determine how their membership dues were being used. While there were indeed two separate documents, the entries for expenses did not clearly indicate which activities were related to the administration of the joint plan.

In its May 1998 report, the Régie denied these allegations, as it considered the fact that the financial statements had been audited by a chartered accountant to be sufficient proof of their regularity.

The Ombudsman then investigated and determined that the Régie had not thoroughly addressed the issue. It had concluded that the legal requirements had been met simply because the board had produced two distinct financial statements, and the auditor had approved them. However, the purpose of having a separate accounting system for the administration of the joint plan was to account for expenses related to product marketing. In that sense, the documents presented by the board did not meet the requirements.

The auditor's role, meanwhile, is to verify that the amounts listed are true and accurate. However, it may be difficult for him to distinguish and qualify the expenses of an agency on the basis of two separate yet related types of activities.

Clear financial statements required.

Following the inquiry, the Ombudsman requested that the Régie examine each of the expenses listed in the joint budget plan and confirm that they actually referred to marketing activities. As a result of this study, the Régie acknowledged the need to identify precise criteria to resolve the issue of clearly identifying expenses. To that effect, it established a committee made up of Régie employees and representatives of various federations within the Union des producteurs agricoles. The committee was mandated to clarify the rules for preparing financial statements that meet the legal requirements.

In 2001, the committee issued its report recommending that, from now on, financial statements should follow an accounting plan that must involve a certain number of items, such as:

- Accounting based on type of activity; and
- Expense accounting that includes:
  - A list of general expenses indicating the allocation of expenses for each activity;
  - A specific line for each activity in the plan; and
  - Adjustment entries with specific financial statements allowing the reader to discern any and all changes in the account and the use of all reserve funds as outlined in the plan.

The committee's recommendations were adopted by the executives of the Union des producteurs agricoles, who agreed to ensure that said recommendations would be respected by its various federations. The Régie in turn would perform a follow-up upon receipt of the annual financial statements from each marketing board.

2.2.7

La Régie des rentes du Québec

The Régie des rentes du Québec administers a public plan financed by workers and employers. The plan offers different types of protection, the most important of which are the retirement pension, disability pension and surviving spouse's pension. It is also responsible for monitoring private pension plans, in addition to administering the family assistance plan, which includes family allowance and the allowance for handicapped children.

Legal (In)consistency

A belated declaration of death

One-year limit for retroactive payments.

On March 30, 1993, a citizen's husband disappeared under circumstances that prevented the authorities from officially pronouncing him deceased. His body was discovered on October 11, 1996, and an autopsy determined that he had died around the time of his disappearance. That same month, the citizen applied to the Régie, which awarded her the surviving spouse's pension but refused to extend it retroactively for more than one year. The citizen contested the decision before the administrative court, which upheld the Régie's position.

The Act respecting the Québec Pension Plan stipulates that the surviving spouse's pension is payable as of the month following that in which the contributor died. However, the law also stipulates that the right to this pension may not extend retroactively for more than one year from the date of the surviving spouse's application. Moreover, the Civil Code provides a waiting period of seven years before one may declare the death of a person missing under similar circumstances.

The challenge lay in reconciling the two legislative texts, as citizens end up stuck between the time frames outlined in the two laws when there is a delay between the time a person disappears and the time he or she is pronounced dead. The Régie does not accept applications for the surviving spouse's pension before the person is confirmed dead or before the expiry of the seven-year period.

The Civil Code provides a seven-year period before one may declare the death of a missing person.

However, if the Act respecting the Québec Pension Plan is applied, the surviving spouse could be deprived of his or her pension for up to six years, in the worst case scenario.

At the request of the Ombudsman, the president of the Régie and the Minister of State for Social Solidarity, Child and Family Welfare are currently studying the possibility of harmonizing their respective terms and conditions.

Despite the Ombudsman's request, the Régie still refuses to fairly settle the case of the citizen in question.

The Québec Ombudsman Believes in the Citizen's Right to Full Disclosure

Deadline difficulties

In February 1999, a citizen received a letter from the Régie informing him that his retirement pension application had been accepted. The notice specified that if the citizen wished to cancel the pension for whatever reason, he would have an eighteen-month period following the first payment in which to do so.

Sixteen months after the first payment, the citizen contacted the Régie to cancel the pension and apply for the disability pension instead. When the Régie refused, he applied to the Québec Ombudsman.

Notice was confusing.

Noting that the beneficiary had complied with the deadline indicated in the notice, the Ombudsman inquired as to the reasons for the Régie's refusal. It explained that the retirement pension could not be cancelled because the disability was declared more than six months after the first payment of the retirement pension. Therefore, the disability pension could not be granted.

It turned out that when a retirement pension recipient applies for disability pension, the right to such is only granted if the retirement pension may be cancelled. According to the law, and the practices of the Régie, the pension may be cancelled if:

"The application for a disability pension is made within six months after the first payment of the retirement pension; or

As of January 1, 1998, the application for a disability pension is made within 12 months after the end of the 6-month period following the first payment of the retirement pension and the official date of the disability is prior to the expiry of this 6-month period."

Was the deadline six, twelve or eighteen months?

In this case, the citizen did not satisfy the second condition.

The Ombudsman thereupon pointed out to the Régie that the information it was passing along to its beneficiaries in its form letter was incomplete, as it did not mention the six-month time limit for substituting the retirement pension with the disability pension.

As a result of the intervention, the Régie modified its standard letter, which now includes the information citizens need to exercise their rights.

2.2.8

Le Secrétariat du conseil du trésor

When in Doubt, Increase Flexibility

Circumstantial evidence

In 2000-2001, the government set up a large-scale hiring program aimed at filling the large number of vacant positions throughout its departments and agencies.

Government set up a hiring program.

Through this program, a citizen applied for a technician job.

On May 3, 2001, accompanied by a colleague who was also submitting his application, the citizen went to the Secrétariat du Conseil de trésor and handed in the duly completed form. At the same time, she submitted a friend's application, as a favour. She asked the receptionist for a receipt attesting to the date of her submission, as the deadline was the next day, Friday, May 4, 2001. The clerk replied that she could not give the woman a receipt, as there was no procedure outlined for it.

On June 6, the citizen received a letter stating that her application had been rejected because it had been received too late, on Monday, May 8, 2001. As she had no proof to back up the facts, she applied to the Québec Ombudsman to intervene.

Application rejected for having been submitted too late.

During the investigation, the Ombudsman learned that the friend and the colleague had both been called by the Conseil du trésor for an interview. The Ombudsman then contacted the Conseil and pointed out that, while equal treatment of candidates did indeed call for a strict selection process, under the circumstances, the facts appeared to indicate that the citizen had submitted her form at the same time as her friends, before the deadline.

The facts tended to proove to otherwise.

As a result of this intervention, the Conseil du trésor reversed its decision and admitted the citizen to the competition.

2.2.9

La Société de l'assurance automobile du Québec

The mission of the Société de l'assurance automobile du Québec (SAAQ) is to insure and protect individuals against road-related risks. Its activities centre around four programs: compensation and rehabilitation of road-accident victims; the promotion of road safety; management of the right of access to the Québec road system and the collection of associated fees, as well as the control of motor transport for both people and goods.

Compensation for accident victims

In its year-2000 activity report, the SAAQ listed the goals of its Public Automobile Insurance Plan. The first objective is to compensate, through the payment of indemnities and for the benefit of injured persons or the families of people killed in car accidents, actual economic losses incurred due to a road accident, up to the maximum set forth in the Automobile Insurance Act. Furthermore, the plan aims to facilitate social, educational and occupational reinsertion of accident victims. The use of appropriate support measures and – if necessary – financial aid programs is also covered.

In its advertising campaigns, the Société defines the plan as "Insurance coverage for all citizens" (*Une assurance qui vous protège*). Futhermore, in its service statement, the SAAQ expresses its desire to give accident victims its full attention and treat them with respect and courtesy, in addition to facilitating access to services. It is also committed to fair and equal treatment of all cases.

Unfortunately, in the course of various inquiries throughout 2001-2002, the Québec Ombudsman has noted that changes need to be made to ensure that the objectives of the plan and the commitments listed in the service statement are met.

Too often, decisions rendered by the SAAQ do not take into account all the facts presented, or they uphold a very narrow interpretation of the law. However, the Automobile Insurance Act is meant to benefit society, so accident victims should reasonably expect the decisions rendered to result from an exhaustive analysis that reflects the actual situation.

In his 2000-2001 Annual Report, the Ombudsman denounced many decisions that had either been unjustified or that had not taken into consideration all the facts of the case. This year again, a number of interventions were required after irregular or hasty decisions.

SAAQ Tends to Favour Narrow Approach

Exceptional need

Young woman was disfigured following accident.

A 24-year-old woman was disfigured in a 1998 accident in which her car caught fire. Since then, she has had to wear a hair replacement unit, which had to be made to measure as the specialist told her that her skull was irregularly shaped because of the accident. However, the cost of the prosthetic unit exceeded the $700 maximum listed in the Regulation respecting the reimbursement of certain expenses. The SAAQ therefore refused to reimburse the exceeding amount, so the citizen appealed to the Québec Ombudsman.

Cost of wig exceeded the maximum outlined in the Regulation.

After a first attempt with the Société, the Ombudsman directly appealed to the Minister of Transport, emphasizing that it was essential for this young accident victim to resemble her peers as much as possible. She had already undergone reconstructive surgery to the nose and ears and was now trying to cover her deformed skull with something other than a turban. This need went beyond mere aesthetic considerations and it was the SAAQ's job to facilitate her return to a normal life. Under the circumstances, the spirit of the law should take precedence over the letter.

Full cost was reimbursed.

Following the intervention, the Minister informed the Ombudsman that the SAAQ would reimburse the total cost of the woman's expenses.

Irregular Decisions

Incomplete calculations

In 1992, a full-time Adult Education teacher was left a quadriplegic following an accident. He also owned a cattle farm and was a part-time farmer.

At the time of the accident, the citizen had two sources of income.

An inquiry revealed that the compensation he had been receiving was insufficient, as it had been based solely on his teaching salary. A note in the case file from the time of the accident, meanwhile, specified that the man had been obliged to dispose of his cattle. Nonetheless, the SAAQ had never asked him a single question about his potential agricultural income. However, the law states that the indemnity must take into account all of the victim's income before taxes. A more thorough investigation would have allowed the proper compensation.

Calculation of compensation did not take into account the full loss of income.

Pursuant to the Ombudsman's intervention, the SAAQ agreed to review the citizen's case. Compensation of $35,500 was awarded retroactively, plus interest adding up to a little over $8,500. Furthermore, his regular indemnity payments were increased by $160 per instalment.

Compensation was increased and a retroactive payment made.

Conclusions at Odds with Facts

Conclusion should have been obvious

A citizen was in a car accident while she was in the process of gradually returning to work due to a prior medical condition. The Société considered that she had not completely returned to work at the time of the accident and thus refused to grant her an income replacement indemnity. The accident, however, had rendered her unable to perform her job, and the law, as its name implies, states that the indemnity is intended to compensate for lost income.

At the time of the accident, the citizen was in a back-to-work program.

At the Ombudsman's request, the SAAQ revised its decision and will make changes to its guidelines specifically addressing compensation for people in return-to-work programs.

SAAQ refused to grant compensation for this period.

Unexplained refusal

After having lost her young daughter, a woman asked for psychological help.

In January 2001, a citizen was in a road accident where her young daughter lost her life. The following October, she felt ready to receive psychological help and asked to enter therapy. The SAAQ refused, saying that too much time had passed since the accident. However, neither the law nor its regulations stipulate any time limits in this matter.

SAAQ refused because application came too late.

An inquiry revealed that the Société had recognized the need for psychological treatment several months earlier. The Ombudsman therefore pointed out that, aside from the fact that such situations clearly call for therapy, the SAAQ already had the means to authorize it, which it did.

An unsuitable job

Following a 1992 car accident, a citizen completed a training course in special education as part of the occupational rehabilitation program offered by the SAAQ. Unfortunately, just before his income replacement indemnity was to end in 1997, he was the victim of a second accident. He was then treated for severe post-traumatic stress disorder.

In the summer of 2001, the SAAQ had him undergo a psychiatric examination. Based on the expert opinion, the Société decided that the citizen was able to work as a special education teacher and no longer suffered any after-effects of the second accident. Confused, the man contacted the Québec Ombudsman.

After his second accident, he did not feel strong enough to work as a special education teacher.

The citizen explained that, psychologically, he did not feel strong enough to work as a special education teacher.

Despite the job requirements, the SAAQ considered him fit for the post.

The Ombudsman then studied the medical conclusions on which the decision was based. On the one hand, the expert had indicated that he did not foresee any lasting after-effects of the condition, as long as intensive psychological therapy was continued for as long as was necessary to produce results. As for working as a special education teacher, on the other hand, the expert had specified that in order to return to work, the man would have to go through a certain amount of rehabilitation and it would need to be done slowly. Considering this diagnosis, the SAAQ's decision seemed premature.

Moreover, an SAAQ doctor had noted that the victim reacted with disproportionate levels of panic when faced with stressful situations. However, one of the evaluation criteria for being hired as a special education teacher is emotional stability. The decision now appeared incoherent.

The Ombudsman therefore asked the Société to reconsider its decision.

After re-examining the case file, it finally concluded that the citizen would never be able to work in this type of position. He is to be re-evaluated next year and, in the meantime, compensation was reinstated.

Injuries left woman with insufficient strength to work as housekeeper

A 58-year-old woman was in a road accident in 1998 and suffered numerous injuries to her neck and sternum. In 2000, she appealed to the Québec Ombudsman because the SAAQ considered her able to work as a housekeeper.

In order to evaluate a person's ability to work at a particular job, the SAAQ must consider only the effects of the accident and not those due to pre-existing individual conditions.

SAAQ analysis rested on citizen's age rather than the after effects of her accident.

According to the Ombudsman, while the SAAQ may have considered the woman able to occupy this type of position in 1998, despite her age, it should now have to take into account the permanent limitations resulting from the accident, not her age. Since her neck and sternum injuries prevented her from carrying out the physical tasks included in the job description of a housekeeper, the Société could not possibly deem her able to occupy the position.

The Ombudsman therefore asked the SAAQ to reconsider its decision. The latter agreed, reinstated the income replacement indemnity and retroactively awarded the woman approximately $8,000.

Interest – and more interest

SAAQ does not pay interest due.

For the third year in a row, the Ombudsman is distressed at the number of difficulties encountered by citizens in obtaining the interest due them following a revision or appeal of SAAQ decisions.

Calculations often wrong.

When interest is finally paid, the amount is often insufficient because of the narrow application of the guidelines respecting the date from which the interest is calculated. Thus, in one case brought to the Ombudsman's attention, the interest start date should have been calculated from the anniversary date of the citizen's right to the indemnity and not from the date the decision was reversed. Thanks to the intervention of the Ombudsman, the victim received an additional $4,200 in interest.

The Québec Ombudsman is therefore recommending for the third time now that the SAAQ review its procedures for calculating and paying interest in accordance with the provisions of the law.

Highway Safety

Information Gaps

The choice of a therapis

The Société de l'assurance automobile du Québec has administered the Adaptation of Vehicles Program since July 1, 1997. The object of this program is to enable people suffering from physical disabilities to have access to or drive an automobile. The SAAQ will therefore reimburse the costs of adapting a vehicle in order to make it safer to use.

The citizen was told he would have to go to a specialized clinic to get the evaluation.

A citizen contacted the Société to inquire about the program procedures. He was told that he first had to obtain a needs evaluation from an occupational therapist in a specialized rehabilitation clinic. The waiting period was approximately twelve months if he went through the public sector, but only two weeks in the private sector. However, the SAAQ would not reimburse the cost of a private evaluation.

The CLSC could have performed the service.

As the citizen was already undergoing occupational therapy at his local CLSC, he asked if he could consult his own therapist for the evaluation. The officer answered that this was not possible since he absolutely had to go to a specialized clinic. As the citizen could not afford to wait, he went to a private rehabilitation clinic and paid $275 for the evaluation. A few weeks later, his occupational therapist at the CLSC told him that she regularly did that type of evaluation, that the waiting period was two weeks and the service was free.

The citizen thereupon asked to be reimbursed for the charges since he could have obtained the required evaluation faster and for free from his own CLSC.

The Société denied the request, alleging that the information provided by the officer was correct and that the costs were not refundable since it had been his own decision to go to a private clinic in order to avoid the delays of the public system. Faced with this refusal, the citizen appealed to the Ombudsman.

Following an analysis of the relevant terms and conditions of the program, it appeared that the validity of the evaluation depended on the expertise of the therapist and not the location where he or she practised. Therefore, citizens could go to any clinic offering the service.

Information is to be improved and the cost was refunded.

As a result of the Ombudsman's intervention, the SAAQ reimbursed the full cost of the evaluation. From now on, it will be more careful with the information in transmits and will consider all the possibilities available in the choice of an occupational therapist.

2.2.10

La Société d'habitation du Québec

La Société d'habitation du Québec (SHQ) is the agency responsible for housing policy and programs.

It aims to facilitate access to suitable housing for Quebecers, promote the improvement of overall housing conditions in Québec and encourage the development and recognition of Québec-based housing expertise. It develops and implements various programs such as the Shelter-Allowance Program, which provides financial assistance for low-income households to pay their rent, and home adaptation programs for the handicapped and the elderly.

Delays Sometimes Lead to Loss of Rights

Costly delays

In the spring of 2000, a citizen applied to his regional municipality riding for a RénoVillage subsidy. This program, which is the responsibility of the SHQ, helps rural homeowners finance major repairs to their primary residence. As a general rule, the various regional municipalities act as mandataries for the SHQ and administer the program within their territory.

Evaluation continually put off.

By June, the inspector had still not shown up yet, so the citizen inquired about how his case was progressing. He was told that he was first on the list and that the inspector should drop by very soon. Around mid-July, the man noticed the inspector passing by his house, then turning around in a nearby driveway, after having identified the house he was to visit. Following this incident, the citizen tried in vain to have the inspector return. In August, he learned that the only two subsidies available had already been granted. In September, he filed a complaint with the Québec Ombudsman.

Citizen lost his right to subsidy.

An inquiry confirmed the citizen's story. At the Ombudsman's request, the SHQ and the municipality agreed to have the man's property evaluated for the current year. Unfortunately, under

pressure from his insurance company, he had already made the repairs by the time the municipality contacted him, having had to take out a loan from his financial institution to finance the work.

Retroactive payment finally awarded.

While the SHQ is not generally inclined to grant eligibility retroactively, the Ombudsman pursued the case, due to the shabby treatment it had received. A new inspector arrived, noted the repairs and admitted the citizen into the RénoVillage program. The SHQ then paid him a retroactive subsidy of $5,174.

Narrow Interpretation

Consequences of adding a door

In 1992, the SHQ paid out $13,633 in financial assistance to a small parish for the renovation of a property, as part of the Canada-Québec Residential Rehabilitation Assistance Program aimed at improving hygiene and safety in certain buildings. Initially paid out as a loan, the assistance became non-refundable if the debtor respected the agreed-upon conditions for the duration of the contract.

The contract between the SHQ and the parish council was signed in February 1990 and was to expire in September 2001.

According to the SHQ, adding a door had altered the residential character of the building.

In February 2001, shortly before the contract was to expire, a parish representative asked the SHQ about the possibility of raising the rent for the dwelling in the building. During the conversation, the representative mentioned that a number of small repairs had been carried out in the subsidized building, namely that volunteers had installed a door leading to a boarded-up room, in order to improve the light in the dwelling. The SHQ thereupon concluded that the parish had broken one of the stipulations of the contract, which involved not transforming the building, nor altering, either in whole or in part, its residential character. The parish was informed that it had to refund $1,200 of the loan.

Considering that the alterations made to the building were merely minor repairs and did not justify such a large claim, the parish representative appealed to the Québec Ombudsman to intervene.

The contract had not been breached.

Following an investigation, the Ombudsman felt that the alterations made to the building did not constitute a "transformation" in any way. The subsidy had been granted for a 6-bedroom residence, and the work carried out had in no way affected that classification.

Furthermore, the room divisions had not been altered – they had only added a door. The Ombudsman therefore asked that the SHQ rescind its claim, which it agreed to do.

2.2.11

La Sûreté du Québec

In December 1998, the federal Firearms Act came into effect, covering licences, authorizations and certificates relating to the possession, acquisition and registration of firearms.

Previously, each province controlled firearms within its territory, by applying federal laws and standards, as the activity falls under federal jurisdiction.

The restructuring of the system changed the way these responsibilities were shared and led to negotiations at the federal and provincial levels. Québec was the only province that chose to administer one particular section of the new law, namely the issuing of licences and permits, and conferred this responsibility onto the Chief Firearms Officer in the licensing department of the Sûreté du Québec.

Yet Another Badly Prepared Reform

The administration of the new law by the licensing department of the Sûreté has led to numerous complaints to the Québec Ombudsman due to delays in issuing licences and permits.

In fact, inquiries have revealed that, in close to 80% of cases, citizens were forced to wait between ten and fourteen months to receive either their licence or a notice informing them that their application form had not been filled out properly.

In each case, the intervention of the Ombudsman led to an immediate issuance of the licence or the collection of the data required for processing the case.

Several factors have contributed to the situation: underestimated demand, insufficient resources, improper computer tools, late start of operations, etc.

In 2001-2002, the situation had slowly begun to improve, and from now on the Sûreté du Québec should be more equipped to follow up on licence and permit applications and meet applicants' expectations within a reasonable period of time.

3

The Québec Ombudsman's Public and Media Relations

In the course of fiscal year 2001-2002, the Québec Ombudsman took part in some sixty public and media-related events. The institution also hosted four episodes of the show *Accès.com* on Montréal-based Canal Vox, where the Ombudsman's mandate was presented, as well as the actions and services the office offers to the public.

The Ombudsman also participated in awareness and informational activities at various symposia and meetings with community organizations. She attended the Conference on Computerization of Health Records, jointly organized by the Commission d'accès à l'information du Québec and the Centre for Bioethics of the Clinical Research Institute of Montreal, and also participated in the Québec Association for Community Living's regional consultation on its report on the reception and treatment of the intellectually challenged within the legal system, entitled *Déficience intellectuelle : accueil et traitement au sein du système judiciaire*. As well, the Ombudsman attended the Salon des Aînés 2001 in Québec City, for the third year in a row, and also attended the Open House at the courthouse in Montréal.

At the Forum on Compulsive Gambling, organized by the Québec Government in November 2001, the Ombudsman presented her comments and suggestions on pathological gambling and the problems it causes to Québec society.

For the eighth year in a row, the Québec Ombudsman welcomed recipients of Fondation Jean-Charles-Bonenfant bursaries for one-day internships at its offices.

Over the past year, the Ombudsman has been called upon by newspaper and Internet reporters to issue comments and press releases on a wide variety of topics such as photo-radar, the Bill on the Health and Social Services Ombudsman, the Duplessis Orphans, the quality of client services within the Québec Government, the plan for collecting support payments, the $5-a-day child care subsidy program, Correctional Services and gambling addiction.

Through its participation in all of the above public and media-related activities, the Ombudsman has upheld its main goal, namely to promote awareness about the Ombudsman's mandate, services and actions to as many citizens as possible and thus help to correct and prevent prejudices.

2001-2002 Québec Ombudsman Speeches and Conferences

May 24, 2001	"Le citoyen au cœur des préoccupations" [The Citizen – Focus of our Concerns], Convention of the Association sur l'accès et la protection de l'information, in Québec City.
June 4 and 8, 2001	"Le rôle du Protecteur du citoyen" [The Role of the Québec Ombudsman], La Maisonnée, immigrant community centre, in Montréal.
October 10, 2001	"Le rôle du Protecteur du citoyen" [The Role of the Québec Ombudsman], Carrefour populaire Saint-Michel community meeting hall, in Montréal.
October 14 to 18, 2001	"Le pouvoir de recommandation : comment l'exerce-t-on au Québec" [The Power of Recommendations and How it is Exercised in Québec], Andorra la Vella, Andorra.
October 18, 2001	"Démocratie et services publics" [Democracy and Public Service], Symposium of the Syndicat de la fonction publique du Québec, in Québec City.
October 24 and 31, 2001	"Le rôle du Protecteur du citoyen" [The Role of the Québec Ombudsman], South Asian Women's Community Centre, in Montréal.
November 7, 2001	"Le rôle du Protecteur du citoyen" [The Role of the Québec Ombudsman], Canadian Bar Association – Québec Branch, in Montréal.
December 5, 2001	"La performance, avant tout pour le citoyen" [Performance, Above All for the Citizen], Institut de gestion financière de Québec, in Québec City.

January 16, 2002	"Le rôle du Protecteur du citoyen" [The Role of the Québec Ombudsman], Club Richelieu de LaSalle, in Montréal.
January 25, 2002	"Respect for the Individual Living with Alzheimer's Disease: A Balance between Human Feelings and the Law", Alzheimer Groupe Inc. Alzheimer Awareness Conference, in Montréal.
February 14, 2002	"Le rôle, l'action, le pouvoir, l'indépendance, la neutralité et la compétence du Protecteur du citoyen" [The Role, Activity, Power, Independence, Neutrality and Jurisdiction of the Québec Ombudsman], meeting with public administration and political science students from the École nationale d'administration publique (ENAP) and the Université de Québec à Montréal (UQAM), in Québec City.
March 21, 2002	"La performance et la qualité des ressources humaines" [Performance and Quality of Human Resources], Institut d'administration publique de Québec, in Québec City.

4

The Contribution of the Québec Ombudsman to the Development of the Rule of Law in the International Community

Like many of its counterparts, the Québec Ombudsman helps maintain and reinforce the rule of law, thereby contributing to the rise of democracy, and to the promotion and the defence of human rights.

The recognition of the dignity of the individual is the cornerstone of the notion of rights and freedoms. No society can claim to be civilized if it does not protect human dignity. And, how can better the value of a right be assessed, if not in practice? Enshrining the idea in texts, constitutions, charters and declarations is not enough. Mechanisms such as ombudsman institutions must be established to monitor the application of human rights.

The Québec Ombudsman is an institution that is recognized both in Canada and around the world for its professionalism, its contribution to the development of the rule of law and the quality of its interventions in terms of international cooperation.

The Québec Ombudsman is an active member of five professional ombudsman associations that pursue the same objectives: promoting the concept of ombudsmanship, supporting existing institutions, training staff, fostering research and disseminating information.

The International Ombudsman Institute

Founded in 1978, the International Ombudsman Institute (IOI) is a worldwide organization of ombudsman offices, currently comprising 242 members. Its head office is located at the University of Alberta in Edmonton. Its Board of Directors meets yearly and a members' conference is held every four years. The Québec Ombudsman will play host to the IOI Board of Directors meeting in 2003 and the VIIIth International Conference in 2004.

The Association of Ombudsmen and Mediators of French-Speaking Countries

The Association of Ombudsmen and Mediators of French-Speaking Countries (AOMF) brings together ombudsmen and mediators from the French-speaking world. It has offices in

Paris and Québec City and is currently made up of 40 members. The AOMF was founded through the initiative of the Médiateur de la République française and the Québec Ombudsman in 1997, with the collaboration of the Québec Government and the Agence de la Francophonie. The Association's Board of Directors meets annually and a members' conference is held every two years. The second statutory meeting was held in the Principality of Andorra from October 14 to 18, 2001. The next conference will be hosted by the Mediator of Tunisia in 2003.

The Canadian Ombudsman Association

Although Canadian provincial ombudsman offices have been holding annual meetings for the past 25 years, the Canadian Ombudsman Association (COA) was only established in 1998. Comprising 125 members, the COA's head office is located at the offices of the Ombudsman of Ontario, in Toronto. The Board of Directors holds its annual meeting during its members' conference. The Québec Ombudsman hosted the last conference in Québec City from September 9 to 12, 2001.

The United States Ombudsman Association

The Québec Ombudsman is also an institutional member of the United States Ombudsman Association (USOA), which unites ombudsmen from throughout the United States and Canada. The USOA hosts a members' meeting every year.

The Canadian Ombudsman Forum

The Canadian Ombudsman Forum is a newly formed professional association that brings together legal, corporate, university and college ombudsmen, as well as people who are interested in the ombudsman concept. The COF is headed by a board of directors and holds a general meeting of its members every year. The Forum now includes 47 members. The Québec Ombudsman has been a member of the Forum since September 2001. The COF will hold its first conference in 2003.

International Relations

There are a number of national and regional ombudsman associations world-wide, as well as organizations that unite ombudsmen working in specific sectors. They contribute to the establishment and the development of ombudsman institutions, the promotion of human rights, as well as the protection of citizens' rights with respect to public administrations and, occasionally, the private sector. This international community of ombudsmen cannot maintain and strengthen its existence without the effective co-operation of its members.

Main activities of the Québec Ombudsman in 2001-2002

On May 8, 2001, the Québec Ombudsman welcomed the Mediator of Burkina Faso and two of his colleagues in the course of a study mission also being carried out in France and Senegal.

From September 9 to 12, the Ombudsman hosted the annual Conference of the Canadian Ombudsman Association. The theme of the conference was "The Ombudsman, Coping with Changes on all Fronts", and welcomed over 120 participants from across Canada and the United States. Despite the tragic events of September 11, the conference was highly successful. The participants were very appreciative of the quality of the programming and the expertise of the guest speakers. The North-American chapter of the International Ombudsman Institute held its Board of Directors meeting at the conference.

On October 11 and 12, 2001, the Québec Ombudsman was invited to Barcelona, Spain, by the Síndic de Greuges de Catalunya (Ombudsman for Catalonia). The workshop with the Síndic, his deputies and members of his staff allowed to better

understand the mission and organization of the Sindic de Greuges. During her visit, the Québec Ombudsman was received by Mr. Joan Rigol, President of the Parliament of Catalonia.

The Association of Ombudsmen and Mediators of French-Speaking Countries held its second statutory conference in the Principality of Andorra from October 14 to 18, 2001, hosted by the Mediator of Andorra, Mr. Ricard Fiter Vilajoana. At the general assembly, the members elected their executive, and Ms. Champoux-Lesage was elected to the AOMF Board of Directors for a two-year mandate.

From October 28 to November 1, 2001, the Québec Ombudsman attended the annual Board of Directors meeting of the International Ombudsman Institute in Seoul, South Korea. The Ombudsman has been on the IOI Board of Directors since June 2001, when she was named host of the VIII[th] International Conference, to be held in Québec City in September 2004.

On November 2, 2001, as part of the program for inviting and welcoming international public figures to Québec (*Programme d'invitation et d'accueil des personnalités étrangères*) administered by the Ministère des Relations internationales, the Deputy Ombudsman, Ms. Lucie Lavoie, met with Ms. Sophia Mappa, founder and head of the Forum de Delphes. The Forum de Delphes is an international association that brings together intellectuals, social activists and political representatives who wish to reflect upon the specifics of the Western economic model and the consequences it has on countries in both the Northern and Southern hemispheres.

Also on November 2, 2001, Ms. Frances Hudon-Szigeti, Delegate of the Québec Ombudsman, met with Mr. Raoul Rojo, a professor and researcher at the Federal University of Rio-Grande-do-Sul in Porto-Alegre, Brazil, as part of a study on the prosecution of conflicts involving society and citizenship (*Judiciarisation de conflits sociaux et citoyenneté*), which touches on the role of the ombudsman and other public agencies that protect human rights.

International Addresses

The Association of Ombudsmen and Mediators of French-speaking Countries (AOMF), the International Ombudsman Institute (IOI), the Canadian Ombudsman Association (COA) and the United States Ombudsman Association (USOA) may be reached at the following addresses:

ASSOCIATION OF OMBUDSMEN AND MEDIATORS OF FRENCH-SPEAKING COUNTRIES (*ASSOCIATION DES OMBUDSMANS ET MÉDIATEURS DE LA FRANCOPHONIE – AOMF*)

Le Médiateur de la République
53, avenue d'Iéna
75116 PARIS
FRANCE
Phone: (33 1) 45 02 7272
Fax: (33 1) 45 00 4791
Fax: (418) 643-8759
E-mail: aomf@médiateur-de-la-république.fr

Le Protecteur du citoyen du Québec
525 René-Lévesque Blvd E., Suite 1.25
Québec City, Québec G1R 5Y4
CANADA
Phone: (418) 643-2688
Fax: (418) 643-8759
E-mail: protecteur.citoyen@pc.gouv.qc.ca

INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)

Faculty of Law
University of Alberta
Suite 205 D, Weir Library
Edmonton, Alberta T6G 2H5
CANADA
Phone: (780) 492-3196
Fax: (780) 492-4924
E-mail: callan@law.ualberta.ca
lreif@law.ualberta.ca
Web site: http://www.law.ualberta.ca

CANADIAN OMBUDSMAN ASSOCIATION (COA)

Ombudsman's Office
AOC/COA
125 Queen's Park
Toronto, Ontario M5S 2C7
CANADA
Phone: (416) 586-3300
Fax: (416) 586-3506
E-mail: clewis@ombudsman.on.ca

UNITED STATES OMBUDSMAN ASSOCIATION (USOA)

Business Office
Post Office Box 3355
Madison, WI 53704-0355
UNITED STATES
Phone: (608) 661-0402
Fax: (608) 661-0402
E-mail: usoa@usombudsman.org
Web site: http://www.usombudsman.org

CANADIAN OMBUDSMAN FORUM (COF)

Office of the Commissioner of Official Languages
344 Slater Street, Suite 395
Ottawa, Ontario K1A 0T8
Canada
Phone: (613) 995 6368

5

The Service Quality Commissioner's Report

The administrative policy on handling complaints regarding services rendered by the Québec Ombudsman (*Politique administrative sur le traitement des plaintes à l'égard des services du Protecteur du citoyen*) allows people who are dissatisfied with the Québec Ombudsman's services to appeal to its Service Quality Commissioner.

Between April 1, 2001 and March 31, 2002, the Commissioner received 97 complaints from 75 people. Some complaints listed several reasons, and a total of 143 sources of complaints were examined.

The Commissioner praised the staff of the Québec Ombudsman for their excellent cooperation and the demonstration of their sincere desire to improve the quality of their services.

Recommendations

The Commissioner outlined a series of eleven recommendations proposing means to improve the quality of services along the following lines:

- File maintenance (identification of the source of documents and necessary information);
- The importance of regular reminders of the commitment listed in the Service Statement to respect the two-working-day deadline for all communication from citizens requesting the intervention of the Québec Ombudsman;
- The need to inform citizens about the progress of their case at key junctures and within the stated response time, all within the spirit of the Service Statement;
- Clarification of the reasons justifying Ombudsman interventions when adequate legal recourse exists to properly inform citizens of their rights, and of the limitations of the Ombudsman's interventions in such cases; and
- Regular reminders to the staff of the Québec Ombudsman's obligation to forward any and all complaints respecting the human rights to the Commission des droits de la personne et des droits de la jeunesse.

6

The Protection of Personal Information

Québec Ombudsman's Comments Regarding Bill 180 to Amend Various Legislative Provisions as Regards the Disclosure of Confidential Information to Protect Individuals

In a letter addressed to the Minister of Justice in October 2001, the Québec Ombudsman declared her support for the bill, which was aimed at clarifying the rights and responsibilities of all parties with respect to the protection of human life, while stressing that the protection of one's private life should not be an obstacle to the protection of life itself.

In the hopes of collaborating on this clarification and ensuring the protection of human life and safety while limiting breaches of privacy, the Ombudsman proposed a number of changes.

The recommendations that were adopted first and foremost involved expanding the definition of the term *act of violence* to include *threat of suicide*. Previously, it was not clear that disclosing information with the aim of preventing an act of violence could be interpreted as including the threat of violence to oneself. The term suicide now appears in the various laws that were amended by the bill.

The Ombudsman also proposed that terms be outlined in the Professional Code on the conditions and procedures for members of professional orders to disclose confidential information. This recommendation was also followed

Application of the Act Respecting Personal Information

Following the governmental action plan for the protection of personal information, every department and agency must proceed with an annual evaluation of the level of protection of personal information and account for it in its annual report.

Operation "Access Profiles"

Defining the access profiles of its staff for the files they required led the Québec Ombudsman's office to redefine these profiles and formalize the procedure for accessing this type of information through the creation of a new File Declaration.

Awareness-raising and Training Activities in 2001-2002

A three-and-a-half-hour training session on the principles of the protection of personal information was given by the École nationale d'administration publique to employees who had not followed it already. A training module was also created for all new employees.

Following the adoption of Bill 180, the Ombudsman put together a team with a mandate to propose an administrative policy on the disclosure of confidential information to protect individuals (*Politique administrative sur la divulgation de renseignements personnels en vue d'assurer la protection des personnes*).

Finally, the Ombudsman mandated a specialized firm to evaluate the information security systems and to suggest goals and policies.

Priorities for Action in 2002-2003

The Québec Ombudsman selected the following priorities for action over the next fiscal year:

- Consult with the staff and make them aware of the administrative policy on the disclosure of confidential information to protect individuals;
- Outline an overall policy on all aspects of confidentiality;
- Outline a new policy on information security; and
- Schedule a "Protection of Personal Information Week" in the agenda book.

7
Management Report

In March 2001, the Ombudsman adopted her strategic plan for 2001-2004, listing four goals and orientations, which were to:

- Reaffirm the Québec Ombudsman's commitment to providing direct service to citizens;
- Maximize the influence of the Québec Ombudsman by favouring a preventive and proactive approach;
- Maximize the influence of the Québec Ombudsman by ensuring that its recommendations are implemented; and
- Improve the efficiency and mobilization of resources within the organization.

In the first year, we worked on each one of these orientations, occasionally in the further development of existing tools and occasionally in the design and creation of new ones that would allow us to act more effectively over the next two years.

Reaffirming the Québec Ombudsman's Commitment to Providing Direct Service to Citizens

Three activities monopolized the Ombudsman's attention in this respect: following up on her Service Statement, analysing the quality of responses to clients whose requests were outside the Ombudsman's jurisdiction and preparing a general analysis of the requests that did apply so that an appropriate response plan could be adopted.

The Service Statement stresses accessibility, promptness, the quality of communication and the processing of service requests. In terms of accessibility, the Ombudsman made sure that the public could reach the office, toll free, during the hours listed and could leave a message at any time by voice mail, e-mail or fax. The office also developed a new telecommunications system allowing to keep track of our appointments and commitments.

Moreover, the Ombudsman was committed to returning all messages received within a maximum of two working days, if they could not be answered immediately. To meet this requirement, an electronic message distribution system was developed, which reduced the waiting period. Furthermore, all written requests were systematically recorded and followed up.

Finally, the Service Quality Commissioner was asked to pay special attention to communication-related complaints.

Maximizing the Influence of the Québec Ombudsman by Favouring a Preventive and Proactive Approach

Collaboration with government departments and agencies

Increased exchanges with departments and agencies remained the focus of the Ombudsman's concerns as the preferred means for obtaining lasting results.

Throughout the year, the Ombudsman has made an effort to develop more direct links with government departments and agencies. The result was better mutual understanding and a greater sharing of information on case files under study, especially with respect to plans for legislative or administrative reform. Joint committees actively worked with Student Financial Aid, the Ministère de la Sécurité publique and the Ministère du Revenu. We also had an executive meeting with the Ministère de l'Emploi et de la Solidarité sociale in order to further improve services.

Revised filing system

In order to better document exchanges with departments and agencies and to transmit useful information for improving services, which is the Ombudsman's ultimate goal, the latter revised its filing system. This was a crucial first step to forwarding reliable and user-friendly information on citizen requests and how they are processed by the Ombudsman. In the coming year, other tools will be developed so that twice a year, beginning in 2003, each and every government department and agency will receive an easy-to-follow list of the complaints against it that were handled by the Québec Ombudsman.

"A Legitimate, Credible Complaints Office"

It would be well to reaffirm here the importance of internal mechanisms for handling complains by encouraging departments and agencies to listen to their citizens.

In order to continue the steps begun a few years ago and to respond to requests for support received by government agencies and departments wishing to set up this type of mechanism within their own workplace, the Ombudsman prepared a guide called "A Legitimate, Credible Complaints Office".

Divided into three sections, the guide explains:

- The reason for a complaints-processing mechanism, defining it as a necessary recourse, different from a review or an appeal. The guide also provides a definition of the word "complaint";
- The characteristics of a legitimate complaints-processing mechanism; and
- The principles and attributes of a credible complaints-processing mechanism.

The guide was presented on two occasions, first before the members of the Association des bureaux de plaintes, then to those responsible for following up on service statements.

The guide was also forwarded to all deputy ministers and organization leaders, along with an offer to work with their associates, in sessions tailored to their individual needs. It was also forwarded to other ombudsman offices.

Judging by the letters received and the requests for follow-up, it was very well received.

Analysis of recurring complaints for systemic interventions

Twice a year, in October and March, the investigation staff works together with the executive staff on an overall analysis of citizen requests in order to monitor and identify trends that could guide the Ombudsman in preventive action.

This operation opens the door for discussions on major emerging trends. In the past year, it gave rise to several activities, including an intervention aimed at improving the Crime Victims Compensation Plan. It also allowed us to highlight the difficulties encountered by people with specific needs and to whom the State must provide appropriate adapted services.

Maximizing the Influence of the Québec Ombudsman by Ensuring that its Recommendations are Implemented

In this matter, the year was spent developing internal management tools. Three documents were prepared for improving support for the staff, ensuring greater thoroughness and facilitating access to information.

A guide for processing requests for interventions (*Manuel sur le traitement des demandes d'intervention*) aims to standardize the work of the investigations department responsible for responding to citizens who file complaints or request information. Each step is described and all levels of responsibility are specified.

A document on large-scale interventions (*Document sur l'intervention à effet collectif majeur*) details the selection criteria for more systemic interventions and defines the methodology to be followed.

Finally, we hope to develop the necessary technical support by the beginning of the next fiscal year, at which point the follow-up report on official recommendations (*Tableau de bord du suivi des recommandations officielles*) should allow us to perform a continuous and thorough follow-up of the steps that each of the Ombudsman's recommendations go through in specific cases.

Improving the Efficiency and Mobilization of Resources Within the Organization

Mobilization of personnel

The mobilization of personnel is a determining factor in ensuring better services for citizens. This is why the Ombudsman has chosen to begin a series of structural changes in the organization of her staff and, in 2001-2002, set up a work restructuring committee. The committee has enabled people to be heard and information to be exchanged in order to promote a better understanding of limitations and common needs. It has also provided an outlet for sharing ideas for solutions aimed at improving work practices and the work environment. The committee held five meetings over the past year, which led to many improvements and plans for a better work structure.

In order to improve internal communications and the sharing of information, an intranet was installed and developed over the course of the past year. In addition to rendering a greater number of structural documents accessible, the intranet allows us to distribute a daily internal news bulletin.

Meanwhile, staff training has remained a priority, leading to a number of improvements such as group training sessions on dealing with difficult clients, the protection of personal information, administrative justice, negotiation and arbitration, personnel changes and stress management.

Office procedures

In 2001-2002, the Québec Ombudsman set a goal of establishing work procedures that would allow the office to respond to its varied and constantly-changing mandates.

In order to achieve this goal, the administrative organization was reviewed, which led to the elaboration of a new executive organizational plan, a description of the employment level of administrative positions, fewer management positions, a review of our distribution of resources and the publication of a new organizational chart. Furthermore, the level of financial resources required for both processing and administration was revised and readjusted in collaboration with the Secrétariat du Conseil du trésor.

A number of tasks were reviewed, both in the administrative sector as well as in the sector that processes citizens' files. Among other things, the responsibilities of professional Ombudsman delegates were thoroughly examined.

A few work processes were also reconsidered and redefined. For example, the reception process was improved, so that from now on citizens' requests for services will be centralized at the Québec City office, as was the process for processing complaints respecting the Ombudsman's own services.

The legal structure and support for the work done by the Ombudsman's staff was strengthened by having hired a legal adviser and a paralegal, and having organized a legal support network.

The Ombudsman also planned to perform an annual review of her management rules and regulations in order to make them more thorough and transparent.

The administrative policy manual was also redone along these lines. Over thirty-five policies were redefined in order to adapt them to the specific needs of the Québec Ombudsman as well as to the new management philosophy of the public administration, which is focused on management results and the quality of the services it offers to citizens. Major items were reviewed, such as the overall structure of resource management, staffing, personnel training, performance management, orientation of new employees, attendance, financial and human resource distribution plans, etc.

As Québec Ombudsman, I hereby confirm that the administrative data included here in are correct.

The Québec Ombudsman,

Pauline Champoux-Lesage

8

Administrative Structure

Organizational Chart

Ombudsman
Pauline Champoux-Lesage

Deputy Ombudsman
Lucie Lavoie

— Service Quality Commissioner

— Legal Advisor

General Secretariat
André Sasseville

- Communications and Public Relations
- International Relations
- Coordination and Organizational

Human Resources and Administrative Branch
Richard Sirois

- Human Resources
- Financial Resources
- Physical Resources
- Computer Resources
- Documentation Center

Reception
Hélène Roux

- Field Complaints
- Inform the Public
- Process Mail

Investigations Branch Quebec City Office
Francine Larouche

- Annuities and Indemnities (CSST, IVAC, SAAQ, RRQ, CARRA)
- Health, Education, Family, Public Curator
- Environment, Agriculture, Natural Resources
- Information Access, Police Ethics, Professions Board
- Language

Investigations Branch Montreal Office
Jean-Marie Mercier

- Social Assistance, Support Payment Collection
- Public Security
- Income, Labor, Justice
- Industry & Trade, Transportation, Highway Safety Code, Régie du logement
- Immigration and Relations with citizens

Mandate of the Administrative Units

Reception staff receive service requests from citizens, provide information on the role of the Québec Ombudsman, assist and guide them in the appropriate steps to be taken when their request falls outside the Ombudsman's jurisdiction and forwards all other requests to the Investigations Branch.

The Investigations Branch processes service requests from citizens who feel they have been treated unfairly by a department or agency under the jurisdiction of the Québec government. If an investigation shows that the citizen's complaint is legitimate, the Québec Ombudsman intervenes to secure redress for the perceived injustices or inequities. The Investigations Branch also carries out systemic studies in order to identify and rectify the source of recurring problems.

The department also works on prevention by analysing bills as well as draft regulations, policies and guidelines, in order to recommend amendments to provisions likely to cause unjust or unfair treatment of citizens. It prepares opinions, advisory reports and briefs supporting the Ombudsman's interventions with the National Assembly, ministers and agency directors.

The General Secretariat oversees communications, public relations and international cooperation for the Québec Ombudsman. It mainly co-ordinates relations with ombudsman offices that request assistance.

Human Resources and Administration ensures proper management of the human, financial, material and information resources of the Québec Ombudsman.

Management Committees

The Québec Ombudsman relies on a number of advisory committees to help ensure proper and enlightened management.

The Ombudsman is assisted by her executive committee in various office orientation and management duties. The committee includes the Ombudsman herself, the Deputy Ombudsman, the General Secretary, the Director of Human Resources and Administration, the Directors of the Québec City and Montréal Investigations Branches and the head of Reception.

The committee for the Protection of Personal Information oversees the application of the Act respecting Access to documents held by public bodies and the Protection of personal information through the implementation of an action plan adapted to the institution. It is chaired by the Québec Ombudsman and brings together the person responsible for the protection of personal information, the Director of Human Resources and Administration, the person responsible for documentary resources and a Montréal Office representative.

The work structure committee, established in 2001-2002, is meant to be a forum for voicing concerns and exchanging information between upper management and staff in order to promote mutual understanding and common needs. It has also provided an outlet for sharing ideas for solutions aimed at improving work practices and the work environment. The committee is composed of the Ombudsman, the Director of Human Resources and Administration and two representatives of each of the following personnel groups: professionals, technicians and support staff.

The mandate of the Internet and intranet management committee is to set up and oversee the application of policies and management regulations for the Québec Ombudsman's Internet and intranet sites. It includes the site administrator as well as communications, information technology and personnel representatives.

Resource Management

Human Resources

In 2001-2002, the Québec Ombudsman employed a staff of 85 authorized positions. As of March 31, 2002, the regular positions were allocated as follows:

Québec Ombudsman Staff 2001-2002

	Special appointments	*Senior managers*	*Middle managers*	*Professionals*	*Technicians*	*Support staff*	***Total***
Office of Ombudsman and Deputy Omb.	2	1	2	3	1	3	**12**
Reception			1		2	3	**6**
General Secretariat and Communications		1				1	**2**
Investigations Branch		1				1	**2**
Québec City Office		1		15	7	1	**24**
Montréal Office		1		12	10	2	**25**
Humans Resources and Administration		1		4	3	3	**11**
Non-allocated							**3**
Total	**2**	**6**	**3**	**34**	**23**	**14**	**85**

Several temporary employees were also hired over the course of the year, to assist the regular staff in ensuring that the Ombudsman is fully supported in carrying out her mission. In addition, the Ombudsman once again hired two law clerks, who were thus able to complete their training by benefiting from a six-month paid internship.

Financial Resources

The budgetary credits allocated to the Québec Ombudsman for the year 2001-2002 were expended as follows:

Expenditure Statement for the Fiscal Years Ended March 31, 2001 and 2002		
	2000-2001 ($)	**2001-2002 ($)**
STAFF		
Regular and temporary employees	4,469,949	4,756,653
Employer's contributions	467,198	486,227
Pensions for former ombudsmen and deputies	150,368	153,010
Total	**5,087,515**	**5,395,890**
OPERATIONS		
Transportation and communications	377,509	406,835
Professional and administrative services	238,736	178,482
Maintenance and repairs	15,238	14,329
Rent and leasing fees	813,246	813,525
Goods and supplies	69,809	87,274
Material and equipment	38,679	127,018
Amortization	62,533	104,308
Other expenditures	1,895	2,445
Total	**1,617,645**	**1,734,216**
CAPITALIZATION		
Computer technology development	48,924	20,181
Material and equipment	32,033	61,879
Total	**80,957**	**82,060**
Grand total	**6,786,117**	**7,212,166**

Collaborators

The Québec Ombudsman would like to thank the following people who, over the past year, contributed to the success of our mission:

ALAIN, Aline
ALARIE, Pierre
ALLAIRE, Éric
ANTILA, Kim
AUGER, Jacques L.
BAILLARGEON, Rita
BEAUPRÉ, Claire
BÉDARD, Jean-Pierre
BÉGIN, Marcel
BÉLANGER, Claude
BERGERON, Ann
BISSONNETTE, Philippe
BLACKBURN, France
BLAIS, Chantal
BOLDUC, Yves M.
BOUCHARD, Dominique
BOULANGER, Annie
BOURGET, François
BOUTIN, Andrée
BRETON, Josselin
BUSQUE, Andrée
BUSSIÈRES, Jo-Anne
CAILLOUX, Mariette
CARON, Danielle
CHABOT, Nicolas
CHAGNON, Anne-Sophie
CHARTRAND, Louise
CHASSÉ, Lyne
CLÉMENT, Sylvie
CUSSON-DESJARDINS, Johanne
DAGUERRE, André
DEMERS, Marie-Christine
DESCHÊNES, Lyne
DESGAGNÉ, Sabrina
DESLIÈRES, Carmen
DUBUC-HICKEY, Diane
DUFOUR, Francine
DUGUAY, Suzanne
FALARDEAU, Louise
FOURNIER, Berthe
GAGNON, Lucie
GAGNON, Suzanne
GAUGUIN, Christine
GENDRON, Claire
GOSSELIN, Dorys
GOYETTE, Céline
GUAY, Robert
HUDON-SZIGETI, Frances
JACQUES, Stephan
LABELLE, Denise
LABERGE, Serge
LABONTÉ, Michel
LADOUCEUR, Marie-Claude
LALIBERTÉ, Martine
LAMARRE, Margot
LAMY, Micheline
LANGLOIS, Claire
LANGLOIS, Denis
LAQUERRE, Nathalie
LAROUCHE, Francine
LAROUCHE, Francyne
LAVOIE, Bruno
LAVOIE, Lucie
LESSARD, Michèle
LEVAC, Lucie
LIRETTE, Marlène
LYNCH, Micheline
MacDONALD, Guy
MATTEAU, Marie-Claude
MAYER, Lise
McNICOLL, Micheline
MERCIER, Jean-Marie
MORIN, Pierre
NADEAU, Julie
NADEAU, Lorraine
NORMAND, Margaret
NUNEZ, Égidio
OSTIGUY, Manon
PAGÉ, Guy
PAQUET, Jean-Claude
PAQUETTE, Louise
PÉLOQUIN, Marie-José
PICARD, Suzanne
PILON, Diane
PLANTE, Patrick
POULIN, Lucie
PRATTE, Valérie
PRÉVOST, France
RACETTE, Anne-Marie
RENAUD, Johanne
RIOUX, Sophie
RIVARD, Claude
ROUFFIGNAT, Denise F.
ROUSSEAU, Fernande
ROUX, Hélène
SASSEVILLE, André
SAVARD, Nelly
SÉVIGNY, Monique
SINCLAIR, Gaétane
SIROIS, Richard
SWEENEY, Linda
TALBOT, Suzanne
TEIXEIRA, Armenia
THÉROUX, Sylvie
TOUCHETTE, Stéphane
TREMBLAY, Mona
TURCOTTE, Sylvie
WENTSER, Georges
YACOUB, Michel

Statistics

Introduction

The following pages provide data on the requests received and the interventions completed by the Québec Ombudsman in fiscal 2001-2002. We began the year with 1,320 requests already under investigation.

Definitions

To facilitate comprehension of the data, a brief definition of the main terms used in the tables is provided below.

Request for Information: A request made to the Québec Ombudsman which the latter determines to be merely a request for information. Such a request may concern a department or agency within the Québec Ombudsman's jurisdiction, or an organization or a matter of information beyond its jurisdiction.

Request for intervention: A request made to the Québec Ombudsman which the latter determines to be a grievance or complaint requiring its intervention. Such a request may concern a department or agency within the Québec Ombudsman's jurisdiction or an organization beyond its jurisdiction.

Rejected request for intervention: A request that concerns a department beyond the ombudsman's jurisdiction or a private matter, or a request for which the citizen has access to adequate legal recourse, or for which an aspect of the law prevents it from intervening even when the request concerns the act or failure of a department within its jurisdiction.

Referred request for intervention: The Québec Ombudsman refers a request for intervention concerning a department or agency which falls within its jurisdiction and asks the citizen to first present his case to the department in question or to the department's complaints office.

Suspended Intervention: The Québec Ombudsman suspends the investigation process when it recognizes that the request is beyond its jurisdiction, that an aspect of the law prevents it from intervening or that the dispute has been settled.

Intervention without request for correction or unsubstantiated complaint: Upon intervening with a department or agency within its jurisdiction, the Québec Ombudsman determines that the citizen filing the request has not been wronged by an act or failure of this public organization.

Intervention with request for correction or substantiated complaint: Upon intervening with a department or agency within its jurisdiction, the Québec Ombudsman determines that the citizen has been wronged by an act or failure of this public organization.

Figure 1

REQUEST LEVELS SINCE 1997-1998

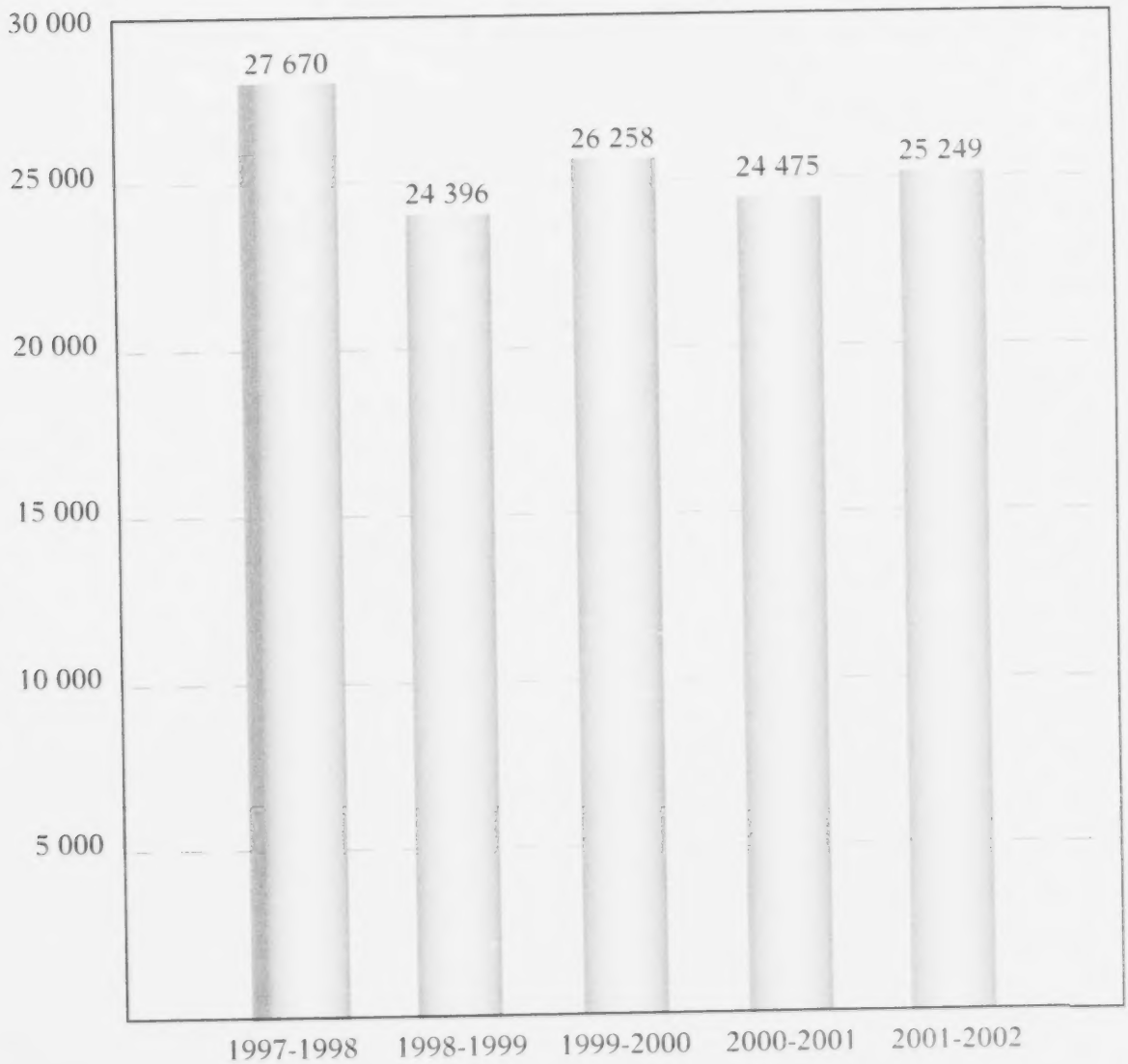


Table 1

ORIGIN OF REQUESTS IN 2000-2001 AND 2001-2002

Region	Population[1]		2000-2001		2001-2002	
	n	%	n	%	n	%
(01) Bas-Saint-Laurent	203,103	2.7	731	3.0	743	2.9
(02) Saguenay – Lac-Saint-Jean	284,787	3.8	638	2.6	767	3.0
(03) Capital Region (Québec City)	648,855	8.8	4,238	17.3	4,946	19.6
(04) Mauricie	261,087	3.5	915	3.7	875	3.5
(05) Eastern Townships (Estrie)	290,979	3.9	844	3.5	786	3.1
(06) Montréal	1,838,472	24.8	7,259	29.7	7,233	28.7
(07) Outaouais	323,711	4.4	682	2.8	765	3.0
(08) Abitibi-Témiscamingue	150,623	2.0	479	2.0	419	1.7
(09) Côte-Nord	101,098	1.4	296	1.2	297	1.2
(10) Northern Québec	39,536	0.5	29	0.1	30	0.1
(11) Gaspésie – Îles-de-la-Madeleine	99,797	1.3	331	1.3	305	1.2
(12) Chaudière-Appalaches	390,460	5.3	960	3.9	899	3.6
(13) Laval	354,773	4.8	754	3.1	632	2.5
(14) Lanaudière	400,374	5.4	1,017	4.2	802	3.2
(15) Laurentians (Laurentides)	476,865	6.4	1,619	6.6	1,427	5.6
(16) Montérégie	1,324,041	17.9	2,994	12.2	2,528	10.0
(17) Central Québec	221,943	3.0	469	1.9	425	1.7
Out-of-province	...	...	141	0.6	170	0.7
Unknown	...	...	79	0.3	1,200[2]	4.7
Total	**7,410,504**		**24,475**		**25,249**	

1. Institut de la statistique du Québec, *Estimation de la population des régions administratives du Québec*, revised January 14, 2002.

2. The origin of 1,100 of these requests is unknown due to a computer glitch.

Table 2

DEPARTMENTS AND AGENCIES MOST OFTEN TARGETED BY REQUESTS RECEIVED IN 2000-2001 AND 2001-2002[1]

	2000-2001	2001-2002
Ministère de la Sécurité publique	3,589	4,178
Ministère de l'Emploi et de la Solidarité sociale	2,624	2,131
Ministère du Revenu	1,791	1,435
Société de l'assurance automobile du Québec	757	895
Commission de la santé et de la sécurité du travail	982	851
Ministère de l'Éducation	556	440
Ministère de l'Industrie et du Commerce	222	332
Régie des rentes du Québec	392	327
Curateur public	245	257
Régie de l'assurance maladie du Québec	171	240
Ministère des Relations avec les citoyens et de l'Immigration	122	236
Régie du logement	122	139
Ministère de la Justice	153	126
Commission administrative des régimes de retraite et d'assurances	72	80
Ministère de la Santé et des Services sociaux	67	80
Commission des lésions professionnelles	105	79
Ministère du Conseil exécutif	1	64
Office de la protection du consommateur	21	61
Tribunal administratif du Québec	53	61
Conseil du trésor (Secrétariat du)	15	52
Ministère de la Famille et de l'Enfance	92	52

1. Departments and agencies for which more than 50 requests were received in 2001-2002.

Table 3

RESPONSE TIMES IN 2000-2001 AND 2001-2002

	2000-2001		2001-2002	
Requests for Information	**n**	*%*	**n**	*%*
Same day	3,011	91	3,906	97
Within a week	3,202	97	3,942	98
Total	**3,308**		**4,022**	
Rejected Requests for Intervention				
Same day	10,795	78	12,004	97
Within a week	11,727	96	12,148	99
Within a month	11,912	99	12,266	99
Within three months	11,952	99	12,297	99
Total	**11,980**		**12,331**	
Referred Requests for Intervention	**1,623**	...	**1,618**	...
Suspended Interventions and Requests for Intervention Withdrawn by the Citizen	**1,314**	...	**1,194**	...
Completed Investigations				
Within a week	3,924	62	3,747	63
Within a month	4,847	77	4,633	77
Within three months	5,516	88	5,277	88
Within six months	5,863	93	5,559	93
Total	**6,281**		**5,980**	
Total	**24,506**		**25,145**	

Table 4

REQUESTS FOR INFORMATION BY SUBJECT AREA IN 2000-2001 AND 2001-2002

	2000-2001		2001-2002	
	n	%	n	%
Government of Québec departments and agencies	1,221	37	1,021	25.4
Government organizations not under the jurisdiction of the Québec Ombudsman	231	7	118	2.9
School system	26	1	31	0.8
Health and social services network	158	5	126	3.1
Municipalities	78	2	67	1.7
Federal departments and agencies, and those of other provinces	141	4	168	4.2
Private sector	1,435	43	2,437	60.6
Other	18	1	54	1.3
Total	**3,308**		**4,022**	

Table 5

GROUNDS FOR REJECTING INTERVENTION REQUESTS IN 2000-2001 AND 2001-2002

	2000-2001		2001-2002	
	n	%	n	%
Government agencies not under the jurisdiction of the Québec Ombudsman	814	7	623	5
School system	200	2	141	1
Health and social services network	1,179	10	1,074	9
Municipalitie	591	5	531	4
Federal departments and agencies, and those of other provinces	840	7	736	6
Private sector	5,715	47	6,409	52
Political or legal offices and/or personnel	343	3	285	2
Other adequate recourse available	714	6	902	7
Intervention deemed unnecessary	1,453	12	1,404	12
Other	131	1	226	2
Total	**11,980**		**12,331**	

Table 6

DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2001-2002

	Unsubstantiated Complaints	Substantiated Complaints	Other Requests[1]	Total
DEPARTMENTS				
Assemblée nationale	-	-	1	1
Conseil du trésor (Secrétariat du)	6	11	32	49
Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	10	4	4	18
Ministère de l'Éducation	200	50	182	432
Ministère de l'Emploi et de la Solidarité sociale	832	55	1,173	2,060
Ministère de l'Environnement	7	5	41	53
Ministère de l'Industrie et du Commerce	27	64	269	360
Ministère de la Culture et des Communications	2	-	6	8
Ministère de la Famille et de l'Enfance	19	27	53	99
Ministère de la Justice	44	7	81	132
Ministère de la Recherche, de la Science et de la Technologie	1	-	-	1
Ministère de la Santé et des Services sociaux	12	7	73	92
Ministère de la Sécurité publique	1,259	717	2,171	4,147
Ministère des Affaires municipales et de la Métropole	17	3	9	29
Ministère des Finances	5	1	3	9
Ministère des Relations avec les citoyens et de l'Immigration	38	74	119	231
Ministère des Ressources naturelles	6	-	16	22
Ministère des Transports	14	2	27	43
Ministère du Conseil exécutif	1	-	63	64
Ministère du Revenu	546	275	599	1,420
Ministère du Travail	5	-	8	13
OFFICES (BUREAUX)				
Bureau d'audiences publiques sur l'environnement	-	-	1	1

DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2001-2002

	Unsubstantiated Complaints	Substantiated Complaints	Other Requests*	Total
COMMITTEES				
Comité de déontologie policière	2	-	-	2
COMMISSIONERS				
Commissaire à la déontologie policière	20	-	20	40
BOARDS (COMMISSIONS)				
Commission administrative des régimes de retraite et d'assurances	36	14	25	75
Commission d'accès à l'information du Québec	9	1	21	31
Commission de l'équité salariale	-	-	1	1
Commission de la fonction publique du Québec	1	-	6	7
Commission de la santé et de la sécurité du travail	192	98	542	832
Commission de protection du territoire agricole du Québec	1	-	11	12
Commission des lésions professionnelles	5	5	70	80
Commission des normes du travail	17	3	22	42
Commission des transports du Québec	1	-	3	4
Commission des valeurs mobilières du Québec	3	-	4	7
Commission municipale du Québec	-	1	-	1
Commission québécoise des libérations conditionnelles	16	5	30	51
COUNCILS				
Conseil de la magistrature	1	-	1	2
INSTITUTIONS				
Curateur public	109	52	67	228
Inspecteur général des institutions financières	3	5	6	14
Institut de la statistique du Québec	-	-	1	1
Institut de tourisme et d'hôtellerie du Québec	1	-	-	1

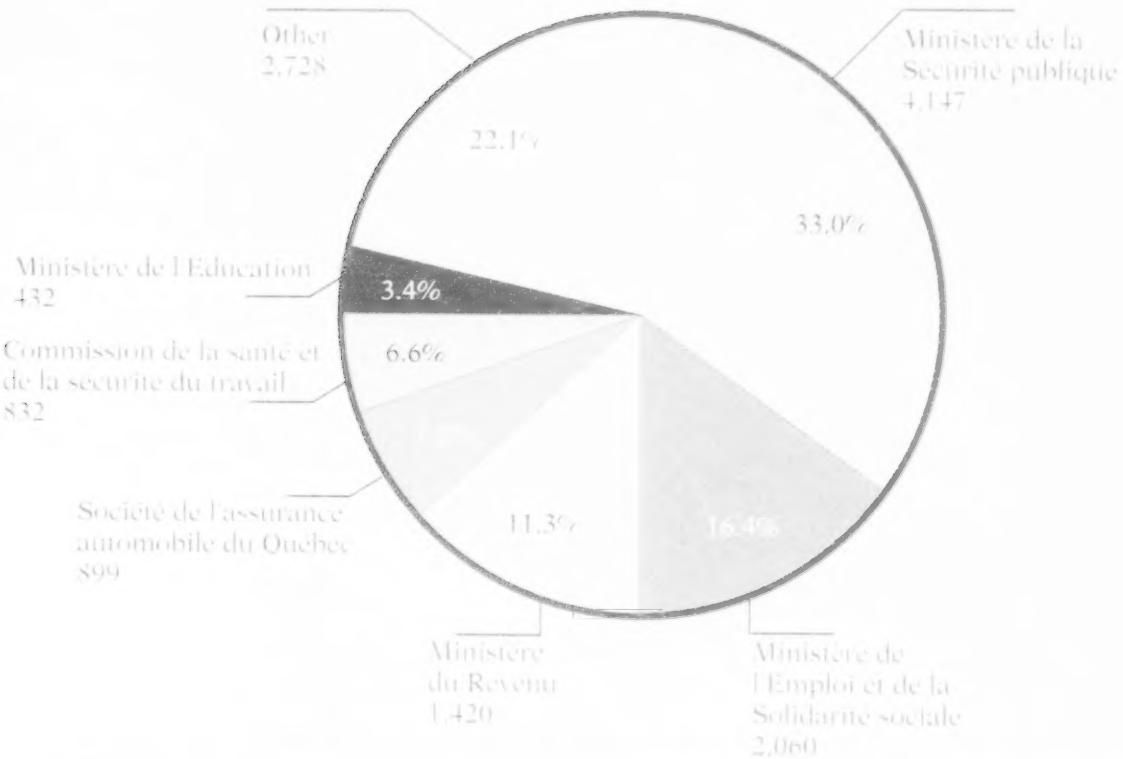
DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2001-2002

	Unsubstantiated Complaints	Substantiated Complaints	Other Requests[1]	Total
OFFICES (OFFICES)				
Office de la langue française	2	2	1	5
Office de la protection du consommateur	7	40	14	61
Office des personnes handicapées du Québec	2	1	1	4
Office des professions du Québec	5	1	3	9
BOARDS (RÉGIES)				
Régie de l'assurance maladie du Québec	142	36	63	241
Régie des alcools, des courses et des jeux	8	2	10	20
Régie des marchés agricoles et alimentaires du Québec	-	1	3	4
Régie des rentes du Québec	140	23	167	330
Régie du bâtiment du Québec	7	-	8	15
Régie du logement	49	6	85	140
CORPORATIONS				
La Financière agricole du Québec	3	1	2	6
Société d'habitation du Québec	11	3	15	29
Société de l'assurance automobile du Québec	343	176	380	899
Société de la faune et des parcs du Québec	5	1	14	20
TRIBUNALS				
Tribunal administratif du Québec	8	1	50	59
Tribunal des droits de la personne	-	-	1	1
Total	**4,200**	**1,780**	**6,578**	**12,558**

1. Requests for information, rejected requests for information, referred requests for information, suspended interventions and intervention requests withdrawn by the citizen.

Figure 2

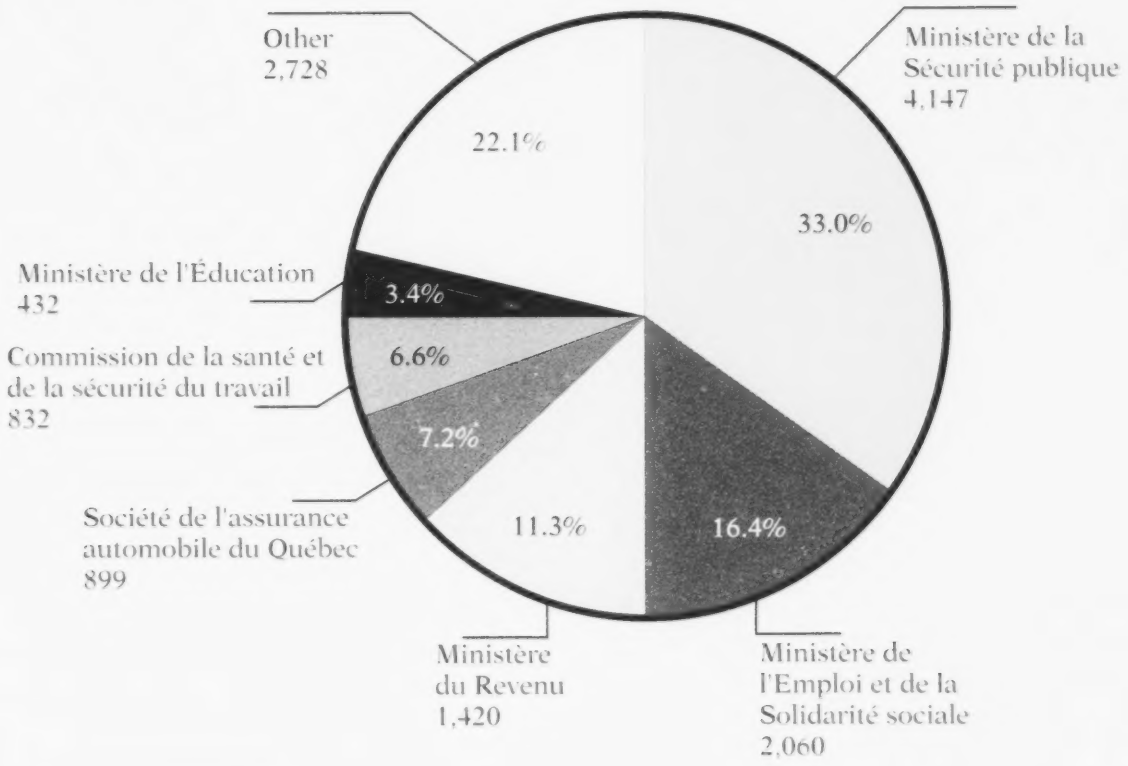
MAIN DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2001-2002



TOTAL : 12,558

Figure 2

MAIN DEPARTMENTS AND AGENCIES TARGETED BY REQUESTS PROCESSED IN 2001-2002



TOTAL: 12,558

Table 7

SUBSTANTIATED COMPLAINTS IN 2001-2002[1]

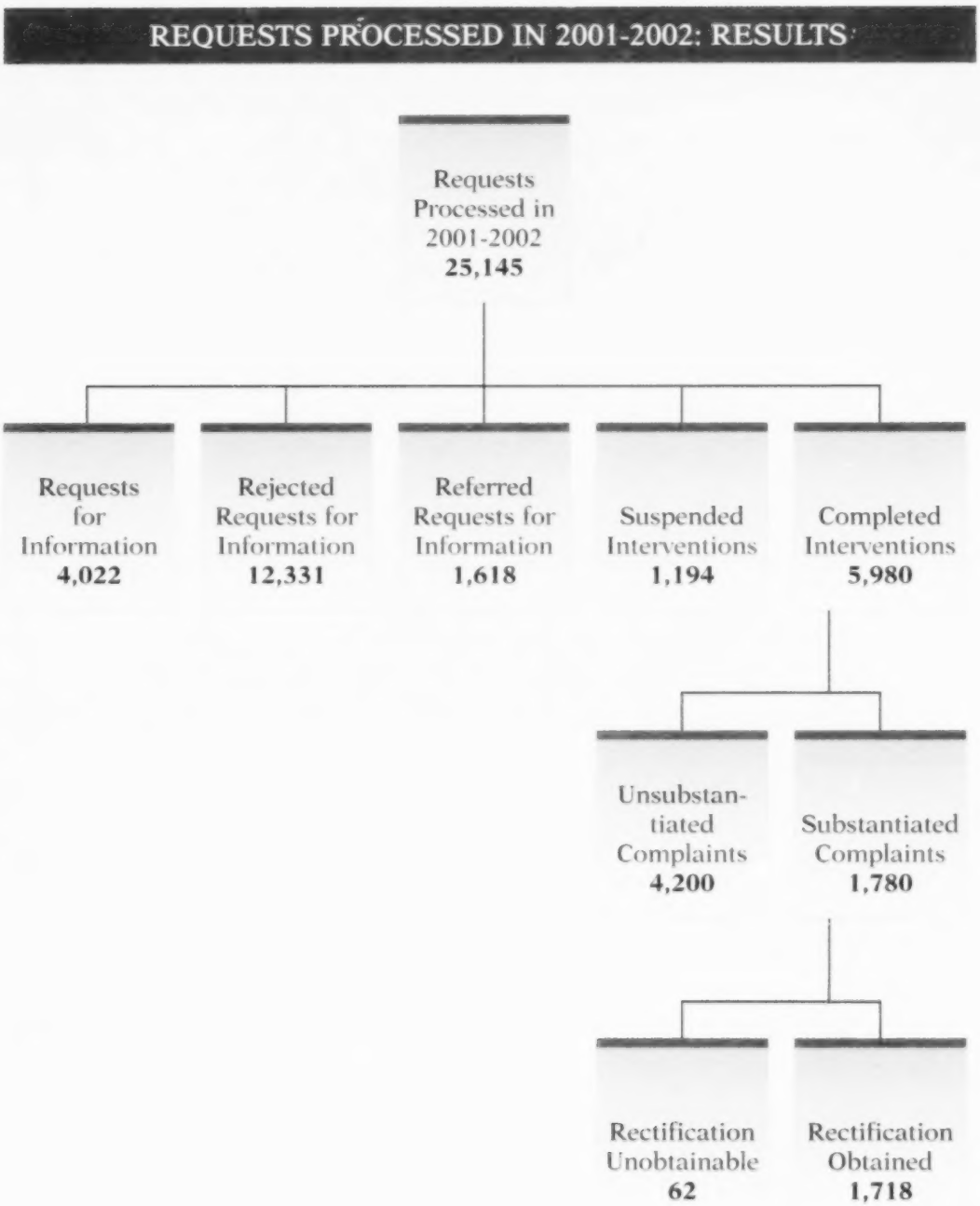
	Completed Interventions	Substantiated Complaints	Rate of Substantiated Complaints
	n	n	%
Office de la protection du consommateur	47	40	85
Ministère de l'Industrie et du Commerce	91	64	70
Ministère des Relations avec les citoyens et de l'Immigration	112	74	66
Ministère de la Famille et de l'Enfance	46	27	59
Ministère de la Sécurité publique	1,976	717	36
Société de l'assurance automobile du Québec	519	176	34
Commission de la santé et de la sécurité du travail	290	98	34
Ministère du Revenu	821	275	34
Curateur public	161	52	32
Commission administrative des régimes de retraite et d'assurances	50	14	28
Commission québécoise des libérations conditionnelles	21	5	24
Régie de l'assurance maladie du Québec	178	36	20
Ministère de l'Éducation	250	50	20
Commission des normes du travail	20	3	15
Ministère des Affaires municipales et de la Métropole	20	3	15
Régie des rentes du Québec	163	23	14
Ministère de la Justice	51	7	14
Régie du logement	55	6	11
Ministère de l'Emploi et de la Solidarité sociale	887	55	6

1. Departments and agencies which were targeted by at least 20 complaints.

Figure 3

REQUESTS PROCESSED IN 2001-2002: RESULTS
Requests Processed in 2001-2002
25,145
Requests for Information
4,022
Rejected Requests for Information
12,331
Referred Requests for Information
1,618
Suspended Interventions
1,194
Completed Interventions
5,980
Unsubstan-tiated Complaints
4,200
Substantiated Complaints
1,780
Rectification Unobtainable
62
Rectification Obtained
1,718

Figure 3


REQUESTS PROCESSED IN 2001-2002: RESULTS
Requests Processed in 2001-2002
25,145
Requests for Information
4,022
Rejected Requests for Information
12,331
Referred Requests for Information
1,618
Suspended Interventions
1,194
Completed Interventions
5,980
Unsubstantiated Complaints
4,200
Substantiated Complaints
1,780
Rectification Unobtainable
62
Rectification Obtained
1,718

Appendix

Review of Bills and Regulations

During the year 2001-2002:

Eleven draft regulations were analysed.

The Québec Ombudsman addressed comments to the administrator responsible for the following draft regulation:

- Draft regulation amending the Regulation respecting the application of the Public Curator Act. See section 2.2.4.

Three draft bills and thirty-eight bills were analysed.

Three briefs were forwarded and presented to parliamentary committees concerning:

- Draft bill on the Québec Health Card Act. See section 2.2.5.
- Draft bill regarding the Act respecting the Québec correctional system. See section 2.1.6.
- Bill to amend the Act respecting Access to documents held by public bodies and the Protection of personal information, the Act respecting the Protection of personal information in the private sector, the Professional Code and other legislation.

The Québec Ombudsman addressed comments to the ministers responsible for the following eight bills:

- Bill amending the Act to facilitate the payment of support. See section 2.1.4.
- Bill to amend the Act respecting the Ministère du Revenu and other legislative provisions as regards the Protection of confidential information. See section 2.1.4.
- Bill to amend the Highway Safety Code and the Code of Penal Procedure as regards photographic speed-measuring devices. See section 2.1.7.
- Bill on the Health and Social Services Ombudsman and amending various legislative provisions. See section 2.1.5.
- Bill on Public Health Act. See section 2.1.5.
- Bill respecting parental insurance.

- Bill to establish a legal framework for information technology.
- Bill to amend various legislative provisions as regards the disclosure of confidential information to protect individuals. See section 6.

The Québec Ombudsman, in collaboration with the Chief Electoral Officer and the Auditor General, intervened with the government, the official opposition and the MNA from Rivière-du-Loup to ensure that the following bill was presented:

- Act to amend various legislative provisions concerning the immunity of the Persons designated by the National Assembly as regards compellability as witnesses.